

ADMINISTRATIVE RULES OF MONTANA

ELECTIONS

TITLE 44 CHAPTERS 3 & 9

*NOTE: NEW WORDING IS UNDERLINED,
DELETED WORDING IS INTERLINED*



CHAPTER 3: ELECTIONS

Subchapter 1

Voting Accessibility for the Elderly and Handicapped

44.3.101 INTRODUCTION, SCOPE, AND INTENT (1) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to electors with disabilities and elderly electors pursuant to the Americans With Disabilities Act, 42 U.S.C. 12132 and the Voting Accessibility for the Elderly and Handicapped Act, Public Law 98-435, passed by the 98th Congress.

(2) It is the intent of the Secretary of State's office that county governing bodies and election administrators work together and proceed in good faith to fully comply with the Americans With Disabilities Act.

(3) For the purpose of clarity and throughout these rules, Pub. L. 98-435 shall be referred to as the Voting Accessibility Act. The Americans With Disabilities Act will be referred to as the ADA.

(4) These rules shall only apply to elections conducted under 13-1-104(1) and 13-1-107, MCA. (History: This rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-3-205, MCA; IMP, 13-1-202, 13-3-205, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.102 ROLE OF SECRETARY OF STATE (1) The Secretary of State is empowered under the Voting Accessibility Act, 13-1-202, MCA, and these rules to:

(a) establish guidelines that define and determine accessibility at the polling place;

(b) prescribe the forms and materials necessary to ensure uniformity in the surveying of polling places;

(c) determine what constitutes an emergency that allows an exemption from accessibility status;

(d) grant exemptions to the requirement that a polling place shall be accessible to the elderly and ~~handicapped individuals with disabilities~~;

(e) establish procedures to ensure that any ~~handicapped individual with a disability~~ or elderly voter assigned to an inaccessible polling place will be provided with an alternative means for casting a ballot on election day;

(f) provide public notice, calculated to reach ~~elderly and handicapped electors~~ individuals with disabilities or elderly electors in a timely manner, of the:

(i) availability of aids under the Voting Accessibility Act;

(ii) assistance under section 208 of the Voting Rights Act of 1965 (42 U.S.C. 1973 aa-6); and

(iii) procedures for voting by absentee ballot; and

(g) ~~not later than December 31 of each even-numbered year~~, report to the ~~Federal Election Commission~~ applicable federal agency, in a manner to be determined by the ~~commission~~ agency:

- (i) the number of accessible polling places in the state;
- (ii) the number of inaccessible polling places; and
- (iii) the reasons for each instance of inaccessibility.

(2) These are the rules adopted to establish and maintain uniformity in the implementation of the Voting Accessibility Act. (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202, 13-3-205~~, MCA; IMP, ~~13-1-202, 13-3-205~~, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.103 DEFINITIONS (1) Unless the context clearly requires otherwise, the following definitions shall apply:

(a) "Accessible" describes the combination of the various elements of the built environment as prescribed by these rules which allows unimpeded entrance to, emergence from, and use of polling place facilities by ~~handicapped and elderly voters~~ individuals with disabilities or elderly electors.

(b) "Circulation route" means a continuous path of travel from the street or parking area to the polling place building, into and through the polling place building to the voting area, and includes both horizontal and vertical travel.

(c) "Elderly" means 65 years of age or older.

(d) "Election" means an election conducted by the authority defined in 13-1-104(1) and 13-1-107, MCA.

(e) "Exterior circulation route" means that part of a circulation route from the street or parking area to the point of entry to the polling place building.

(f) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205, MCA.

~~(f)(g)~~ "Handicapped" "Individuals with disabilities" means:

- (i) ~~those individuals~~ with impaired vision;
- (ii) ~~those individuals~~ with impaired hearing, ~~and~~;
- (iii) ~~those individuals~~ with impaired mobility, including wheelchair users and those who are ambulatory but who are nevertheless impaired by age, disability, or disease; ~~and~~

(iv) individuals with a physical or mental impairment that substantially limits one or more major life activities, who have a history or record of such an impairment, or who are perceived by others as having such an impairment.

~~(g)(h)~~ "Interior circulation route" means that part of a circulation route from the point of entry to the polling place building through the polling place building to the voting area.

(i) "Rural polling place" means a location that is expected to serve less than 200 registered electors. (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202, 13-3-202~~, MCA; IMP, ~~13-1-202, 13-3-202~~, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) To be designated as accessible to individuals with disabilities and elderly voters, the

standards for a polling place approved pursuant to 13-3-205(1), MCA, prior to October 1, 2005, ~~whenever possible~~, must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this section.

(2) Polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this subchapter. (History: This rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-3-205, MCA; IMP, 13-1-202, 13-3-205, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

(1) Unless specified otherwise, the election administrator shall conduct an on-site survey in each polling place 45 days prior to utilizing that facility, except those designated as "rural", as provided in ARM 44.3.109, to determine whether such facilities are in compliance with the criteria set forth in these rules.

(2) Election administrators should encourage county commissioners, election judges, members of the election administrator's staff, and a voting accessibility advisory committee to participate in the survey procedure.

(3) The survey shall be conducted in such a manner as to represent the actual path of travel an elector would take upon arrival at the polling place on election day.

(4) A form prescribed by the Secretary of State shall be used as a checklist for each polling place surveyed. Copies of the survey shall be made available for public inspection and to the Secretary of State upon request, except as provided in (5) ~~of this rule~~.

(5) If an existing polling place fails to satisfy the criteria for accessibility and cannot be permanently or temporarily altered in a safe and reasonable manner to satisfy the criteria before the date of the election, it will ~~either~~ be:

~~(a) designated "inaccessible" and shall not be used unless an exemption is granted by the Secretary of State in accordance with the provisions of ARM 44.3.106; or~~

~~(b) surveyed, evaluated and certified as "technically inaccessible but usable" by a voting accessibility advisory committee, as provided in ARM 44.3.109.~~

(6) A copy of all survey forms for polling places shall be forwarded to the Secretary of State 45 days prior to the election for which the survey was conducted.

(7) A request for exemption form, as prescribed by the Secretary of State, and defined in ARM 44.3.106, shall be attached to the survey for those polling places designated as "inaccessible".

~~(8) A copy of an evaluation form as prescribed by the Secretary of State, signed by the members of a voting accessibility advisory committee shall be attached to the survey for a polling place designated "technically inaccessible but usable."~~ (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202, 13-3-202,~~ MCA; IMP, ~~13-1-202, 13-3-202,~~ MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 1996 MAR p. 3221, Eff. 12/20/96.)

44.3.106 EXEMPTION PROCEDURE (1) If an existing polling place has been surveyed and designated as "inaccessible", the election administrator shall make a reasonable effort to seek and survey for accessibility other potential sites with comparable utility as a polling place.

~~(2) Nothing herein shall require an election administrator to choose an accessible polling place facility located within the jurisdiction in such a manner as to require excessive travel or other hardships for the majority of the qualified electors.~~

~~(3)~~2 If potential polling place facilities have been surveyed and no accessible facility is available and the facilities which are available cannot safely and reasonably be made temporarily accessible, the election administrator shall request in writing to the Secretary of State that the existing polling place be exempt from the criteria set forth in these rules.

~~(4)~~3 A separate request for exemption shall be submitted for each polling place not in compliance. The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.

(4) The Secretary of State may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

~~(6)~~5 If the Secretary of State has reason to believe such an exemption would not be in the best interest of the majority of the ~~elderly and handicapped individuals with disabilities or elderly~~ electors, he shall deny the exemption and:

(a) report to the election administrator and the county governing body his reasons for the denial; ~~and~~

~~(b) request that an accessible or "technically inaccessible but usable" polling place facility be located.~~

~~(7)~~6 A polling place designated as "rural" 45 days prior to an election, shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

~~(8)7~~ If one or more ~~disabled persons~~ individuals with disabilities or elderly electors contact the election administrator or the Secretary of State concerning a specific exemption, the Secretary of State shall work in cooperation with the election administrator and the ~~disabled individuals with disabilities or elderly~~ person(s) in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in ARM 44.3.110. (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202, 13-3-202,~~ MCA; ~~IMP, 13-1-202, 13-3-202,~~ MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 1996 MAR p. 3221, Eff. 12/20/96.)

44.3.107 EMERGENCY EXEMPTION (1) If a polling place designated "accessible" ~~or "inaccessible but usable"~~ becomes unavailable for reasons such as loss of lease, fire, snow, or other natural disasters less than ten days prior to an election, an emergency exists and an alternate polling place shall be selected.

(2) The alternate polling place shall be considered temporary and shall be exempt from the procedures established by these rules, except for the provisions provided by ARM 44.3.111 and 44.3.112.

(3) The alternate polling place shall not be used in the next ensuing election unless it is subject to the procedures provided in ARM 44.3.105 and 44.3.106. (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-20213-3-205,~~ MCA; ~~IMP, 13-1-20213-3-211,~~ MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.108 POLLING PLACE DESIGNATION (1) As the result of an on-site survey, or current voter registration reports, a polling place shall be designated as:

(a) "accessible"; or

(b) "inaccessible";

~~(c) "technically inaccessible but usable"; or~~

~~(d) "rural".~~

~~(2) An "accessible" polling place is one that meets the criteria for accessibility as established by these rules.~~

~~(3) An "inaccessible" polling place is one that does not meet the criteria for accessibility and cannot be made accessible through practical, cost-effective methods.~~

~~(4) A "technically inaccessible but usable" polling place is one that does not meet all the criteria for accessibility but has been surveyed, evaluated and certified by a voting accessibility advisory committee as "usable". Such certification is cause for the Secretary of State to grant that polling place an exemption. However, the Secretary of State may issue an objection to the criteria used for the determination of "usability" for future elections.~~

~~(5) A "rural" polling place is one that serves 200 or less registered electors and is:~~

~~(a) granted an exemption from the criteria for accessibility by the Secretary of State;~~

~~(b) subject to review and redesignation 45 days prior to an election; and~~
~~(c) subject to redesignation following the 1986 election cycle.~~
~~(6) A "rural" designation shall not be construed as cause for denying elderly or handicapped electors in that polling place the right to choose to vote by an alternative method, as provided by ARM 44.3.110.~~

(2) A polling place that has been surveyed pursuant to this subchapter need not be surveyed again unless the conditions of accessibility change.
(History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202~~ 13-3-205, MCA; IMP, ~~13-1-202~~, 13-3-206, 13-3-207, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.109 VOTING ACCESSIBILITY ADVISORY COMMITTEE (1) An election administrator may establish one or more voting accessibility advisory committee(s) (V.A.A.C.).

(2) Each committee shall consist of a minimum of three members, two of which shall represent an organization of elderly persons or an organization of ~~disabled persons~~ individuals with disabilities.

(3) The committee may assist in surveying polling places for compliance with accessibility guidelines.

~~(4) The committee has sole authority to evaluate and certify a polling place as "technically inaccessible but usable."~~

(5) The election administrator shall provide the Secretary of State with a list of the members of each voting accessibility advisory committee, including addresses and telephone numbers.

(6) Each member of the committee may be compensated for the number of hours worked and reimbursed for actual travel expenses incurred while participating in the conduct of an on-site survey.

(7) The election administrator may pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided by 13-4-106(1), MCA. (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202~~, 13-3-205, MCA; IMP, ~~13-1-202~~, 13-3-205, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of ~~a physical handicap~~ disability or age, to access their regular polling place. Those methods are limited to the following:

(a) the practice, commonly referred to as "curbside voting", as provided by 13-13-118, MCA;

(b) absentee balloting, as provided by 13-13-222, MCA; and

(c) prearranged assignment to an accessible polling place within the county. An elector, prevented from voting at his own polling place on election day because it has been exempt from meeting the accessibility criteria set forth in these rules, shall:

(i) notify the election administrator, in writing at least seven days preceding the election, of his desire to vote on election day at an accessible polling place;

(ii) be assigned to the nearest accessible polling place for the purpose of voting in that election;

(iii) sign his name on a special addendum to the official precinct register, as required by 13-2-601, MCA; and

(iv) receive the same ballot to which he is otherwise entitled.

~~(v)~~(2) For the purposes of this part rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

(History: This rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-3-205, MCA; IMP, 13-1-202, 13-3-205, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.111 THE ELDERLY ELECTOR (1) The Voting Accessibility Act defines "elderly" as 65 years of age or older.

(2) The following requirements are intended to benefit elderly electors and shall be implemented by the 1986 June primary election:

(a) Election administrators shall conspicuously display instructions for voting, printed in over-size type, preferably 18 point type, or larger, at each polling place for every election and instructions for registering at each permanent registration facility.

(b) Each polling place shall have a desk, table, or other surface no more than 36 inches in height, with room to accommodate a chair or a wheelchair to permit physically feeble or mobility-impaired electors to vote in a seated position. Adequate privacy shall be provided to ensure the seated elector the same degree of ballot secrecy enjoyed by other electors.

(c) In all polling places in which a stylus is used to mark voting device ballots, at least one stylus shall have a large, easily graspable handle. At least one pen or pencil in each polling place shall be over-sized and easily graspable.

(d) Extra seating shall be provided for elderly electors to rest while waiting their turn to vote. Election judges shall ensure that the seating is available for those for whom it is intended. (History: This rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-13-111, 13-13-112, MCA; IMP, 13-1-202, 13-13-111, 13-13-112, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.112 THE VISUALLY IMPAIRED (1) Visually impaired persons can range from those with slight visual problems, not correctable by normal means, to the totally blind. In addition to the large-type printing requirements, as provided by ARM 44.3.111(2)(a), requirements and suggestions for the visually impaired electors include the following:

(a) adequate lighting shall be provided in both the voting booth and the polling place;

(b) a magnifying glass may be provided in those polling places where the election administrator's common knowledge indicates a need; and

(c) a plastic or cardboard card with a space cut out for a signature may be provided as a guide for signing a precinct register. (History: This rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-13-111, 13-13-112, MCA; IMP, 13-1-202, 13-13-111, 13-13-112, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.113 TELECOMMUNICATIONS DEVICE FOR THE HEARING IMPAIRED (1) Sixty days prior to each election, the Secretary of State shall install and advertise access to a toll-free telecommunications device for the deaf (TDD) for the purpose of providing:

- (a) information on registration;
- (b) voting aids available for the handicapped;
- (c) assistance under section 208 of the Voting Rights Act of 1965; and
- (d) procedures for voting by absentee ballot.

(2) ~~Election administrators shall clearly post the~~ The Secretary of State's ~~TDD number, and shall~~ advertise it the TDD number wherever possible, ~~for 60 days prior to each election.~~ (History: This rule is advisory only, but may be considered a correct interpretation of the law. ~~13-1-202, 13-3-205~~, MCA; IMP, ~~13-1-202, 13-3-205~~, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86.)

44.3.114 COMPLAINTS (1) Within five working days following the receipt of a written notification from the United State's Attorney General or a person who is personally aggrieved by the noncompliance of his polling place with the Voting Accessibility Act, the Americans With Disabilities Act, and/or these rules, the Secretary of State shall transmit a copy of the notification to the appropriate election administrator.

(2) Upon receipt of the notification, the election administrator shall forward to the Secretary of State a copy of the survey form concerning the polling place in question.

(3) Within 30 days of receipt of the notification, the Secretary of State shall cause an independent survey of the polling place to be conducted. A report of that survey shall be provided to the complainant and the election administrator.

(4) If the complainant requests, in writing, that further action be taken, the Secretary of State may call for a hearing in which the complainant, election administrator, representatives of the county governing body, affected groups and his office may be represented.

(a) The purpose of the hearing is to show cause why the particular polling place facility should be:

(i) denied exemption from meeting the criteria established for accessibility by these rules;

(ii) be denied an "accessible" rating; or

(iii) be declared unacceptable for use as a polling place facility and no longer utilized for that purpose.

(5) At any time before, during, or after this process the complainant retains the right to file an action in any court of appropriate jurisdiction or to withdraw the complaint. No exhaustion of this administrative remedy is required. (History: This

rule is advisory only, but may be considered a correct interpretation of the law. 13-1-202, 13-3-205, MCA; IMP, 13-1-202, 13-3-205, MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.115 CRITERIA AND PROCESS FOR A PERSON TO BECOME A DESIGNATED AGENT FOR AN ELECTOR WITH A DISABILITY (1) Consistent with 13-1-116, MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in 13-13-213, MCA.

(2) An application for designation of an agent by an elector under this section:

(a) must be made on a form prescribed by the Secretary of State which shall state the authorization of the elector, the purpose of the agency, and shall require that the authorization be witnessed by two disinterested witnesses and signed by the designated agent;

(b) may be obtained from local election officials, from the office of the Secretary of State, and from any other entity that provides the form; and

(c) must be completed in its entirety.

(3) An agent chosen under this rule must not be the elector's employer, an agent of the individual's employer, or an officer or agent of the voter's union.

(4) An election official must ask if the person being designated an agent is the voter's employer or employer's agent or officer or agent of the voter's union. If the proposed agent is one of those individuals, the voter must choose another person to be the elector's agent.

(5) An agent must be chosen by the individual with a disability. (History: 13-1-116, MCA; IMP, 13-1-116, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

Subchapters 2 through 9 reserved

Subchapter 10

Primary Elections and Nominations

44.3.1001 NUMBER OF SIGNATURES REQUIRED FOR PETITIONS FOR NOMINATION IN CERTAIN INSTANCES (REPEALED) (History: 13-1-202, MCA; IMP, 13-10-502(3), MCA; NEW, 1979 MAR p. 1692, Eff. 12/28/79; REP, 1996 MAR p. 3221, Eff. 12/20/96.)

Subchapter 11

Statewide Voter Database

44.3.1101 SCHEDULE OF FEES FOR STATEWIDE VOTER DATABASE LISTS AND EXTRACTS (1) Upon written request, the Secretary of State through its vendor shall furnish, for noncommercial use to private individuals or entities, a list of registered electors as compiled and maintained in its statewide voter database. For the statewide list or available extracts from the statewide list the charge is \$1,000.00. For a legislative representative district list the charge is \$100.00, for a legislative senate district list the charge is \$150.00, and for a county list the charge is \$200.00. For a subscription for ongoing access to the database and all other available extracts or lists the charge is \$5,000.00 for one year. (History: 2-15-404, 13-2-122, MCA; IMP, 13-2-115(2), 13-2-122, MCA; NEW, 1998 MAR p. 1283, Eff. 5/15/98; AMD, 2002 MAR p. 1667, Eff. 6/14/02; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

Subchapter 12 reserved

Sub-Chapter 13

Voter Information Pamphlet

44.3.1301 SUBMISSION OF VOTER INFORMATION PAMPHLET ARGUMENTS AND REBUTTALS (1) The secretary of state is empowered under section 13-27-410, MCA, to prescribe by rule the format and manner of submission of the arguments concerning the ballot issue. (History: Sec. 13-27-401, MCA; IMP, Sec. 13-27-406, 13-27-407, MCA; NEW, 1993 MAR p. 3064, Eff. 12/24/93.)

44.3.1302 DEFINITIONS Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(1) "VIP" refers to the Voter Information Pamphlet which contains the arguments for and against ballot issues.

(2) "Graphics" refers to anything other than letters, numbers used with sentences, grammar or punctuation marks.

(3) "Oversize type" and "undersize type" refer to any typesetting that is not consistent with the uniform size of the argument.

(4) "Columns" refers to any of the vertical sections of printed matter lying side by side on a page and separated by a rule or blank space. (History: Sec. [13-27-401](#), MCA; [IMP](#), Sec. [13-27-406](#), [13-27-407](#), MCA; [NEW](#), 1993 MAR p. 3064, Eff. 12/24/93.)

[44.3.1303](#) FORMAT OF VOTER INFORMATION PAMPHLET ARGUMENTS AND REBUTTALS (1) Format of arguments and rebuttals:

(a) The argument must be of a uniform typesetting; use of oversize or undersize type is prohibited.

(b) Use of graphics, tables or graphs is prohibited.

(c) Use of columns is prohibited.

(d) Bold, italics and underlined words are acceptable.

(e) Hyphenated words will be counted as one word.

(f) A number such as 303 will be counted as one word; however, three hundred and three will be counted as four words.

(g) Arguments submitted for publication in the VIP must be limited to 500 words; arguments in excess of this limit will only be printed through the 500th word. Rebuttals submitted for publication in the VIP must be limited to 250 words; rebuttals in excess of this limit will only be printed through the 250th word. ~~Errors in typing or grammar will not be corrected or edited.~~

(History: Sec. [13-27-401](#), MCA; [IMP](#), Sec. [13-27-406](#), [13-27-407](#), MCA; [NEW](#), 1993 MAR p. 3064, Eff. 12/24/93.)

[44.3.1401](#) REQUIRED MARKINGS (REPEALED) (History: Sec. [13-13-214](#), MCA; [IMP](#), Sec. [13-13-214](#), MCA; [NEW](#), 1984 MAR p. 394, Eff. 3/1/84; [REP](#), 2004 MAR p. 93, Eff. 1/16/04.)

Rule 44.3.1402 reserved

[44.3.1403](#) FACSIMILE REQUESTS FOR ABSENTEE BALLOTS

(1) An election administrator may treat a facsimile copy request for an absentee ballot as a mail request if all other requirements of [13-13-212](#), MCA are met.

(2) A facsimile copy may be accepted under (1) if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original. (History: This rule is advisory only, but may be a correct interpretation of the law. Sec. [13-1-201](#), MCA; [IMP](#), Sec. [13-13-212](#), MCA; [NEW](#), 1989 MAR p. 1343, Eff. 9/15/89.)

Sub-Chapter 15

Facsimile Voting for Electors of the United States Service

[44.3.1501](#) FACSIMILE MACHINE ACCESS (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1502](#) HANDLING OF FACSIMILE BALLOTS (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1503](#) BALLOT TRANSMISSION (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1504](#) RECEIVING BALLOTS (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1505](#) BALLOT LOG (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1506](#) ELECTOR AFFIRMATION (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1507](#) BALLOT ACCEPTANCE (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1508](#) TRANSCRIPTION OF BALLOTS (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.1509](#) ELECTION JUDGES AND BALLOT SECRECY (REPEALED) (History: Sec. [13-13-278](#), MCA; IMP, Sec. [13-13-277](#), MCA; NEW, 1992 MAR p. 1870, Eff. 8/28/92; REP, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 16 reserved Subchapter 17

Voting Machines and Devices

[44.3.1701](#) EXAMINATION OF VOTING MACHINES AND DEVICES

(1) The Secretary of State is empowered under [13-17-101](#), MCA, to approve voting machines and devices.

(2) Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Applicant" means any person, county governing body, or business entity which has applied for inspection of a voting machine or device under these rules.

(b) "Automatic tabulating equipment" means and includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(c) "Ballot card" means a ballot which is used for voting by the process of punching.

(d) "Ballot labels" means the cards, papers, booklets, pages or other material containing the names of offices and candidates and statements of ballot issues to be voted on.

(e) "Ballot" includes ballot cards, ballot labels and paper ballots.

(f) "Device" means an apparatus used for voting by the process of punching, piercing or otherwise marking of a ballot. Ballots are counted using automatic tabulating equipment.

(g) "Examiners" any or all persons having authority to conduct the examination under ARM [44.3.1701](#)(3) .

(h) "Interested party" includes all persons charged with any duty under the election laws of Montana, any manufacturer of or dealer in mechanical voting machines, voting devices or components thereof and agents of such manufacturer or dealer and any person otherwise affected by these rules.

(i) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the elector or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

(j) "Mechanical voting machine" means an apparatus used for voting that is self-contained using levers and providing a tabulating system within the machine.

(k) "System" includes a self-contained mechanical voting machine or an electronic voting device and the individual components of each.

(l) "Voting machine" means a mechanical apparatus on which to cast votes.

3) Such examination shall be conducted by the office of Secretary of State, who may choose up to two Montana electors to assist with the examination.

(4) The examination shall be held on a day to be agreed upon by the applicant and the Secretary of State.

(5) The place of examination shall be in the city of Helena, county of Lewis and Clark, state of Montana, at such location as may be agreed upon by the applicant and the Secretary of State.

(6) Examination of voting machines and devices shall be made only upon application to the Secretary of State. Such application shall be in writing and shall contain the information prescribed by the Secretary of State.

(7) No application may be submitted to the Secretary of State later than 90 days prior to the date of the election at which the machines are proposed to be used. (History: [13-17-103](#), [13-17-107](#) (1), MCA; [IMP](#), [13-17-104](#), [13-17-107](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79; [AMD](#), 1996 MAR p. 3221, Eff. 12/20/96; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1702](#) CONDUCT OF EXAMINATION (1) The following materials shall be provided by the applicant at the place agreed upon for the examination:

(a) At least one fully operative system unit or set conforming to the description of the same contained in the application.

(b) At least one copy of any brochures, pamphlets, and descriptive or sales material of any kind intended for use in promoting the same for use of such system in Montana.

(c) Samples of any training aids supplied by the applicant for the use of election officials.

(d) Where applicable sample ballots suitable for use in the system substantially in the form required by Montana law for a primary and general election in a year in which a president of the United States of America is to be elected. Such ballots for the general election sample shall also contain a ballot issue to be voted upon.

(e) Where applicable a set of programmed ballots having a known count for each office or ballot issue listed thereon, which count shall be declared before any test tabulation of said ballots is made.

(f) Copies of any other material required by law to be displayed at the polls, or useful for the instruction or information of electors at the polls.

(g) If not contained in other materials, data on the extent of use and length of use of the system being examined in other jurisdictions.

(h) Available data pertinent to ARM [44.3.1703](#)(2). (History: [13-17-107](#) (1), MCA; [IMP](#), [13-17-101](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79.)

[44.3.1703](#) CRITERIA OF CONSTRUCTION (1) Voting machines or devices shall meet the following requirements:

(a) They shall permit and require an elector to vote in secret.

(b) They shall prevent an elector from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote.

(c) They shall permit an elector to secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election.

(d) They shall permit an elector to vote a split ticket in a general election if he desires.

(e) They shall register and record every valid vote cast.

(f) They shall be constructed so that they cannot be tampered with for a fraudulent purpose.

(g) They shall also be constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue.

(h) They shall allow write-in voting.

(i) They shall provide that the ballot may be rotated as provided in [13-13-205](#), MCA, without substantially impairing the efficiency or accuracy of the tabulation of such rotated ballots.

(j) The applicant shall guarantee to provide training and assistance to election officials included in each contract for purchase of a machine or device.

(k) They shall comply with all other requirements of the election laws, so far as they are applicable.

(2) Voting machines or devices shall be constructed of materials sufficiently durable to withstand normal wear and tear due to usage, storage and transportation. It is the intent of this rule that the system shall have a useful life of ten years or more without major mechanical or electronic failure due solely to normal use, storage and transportation. Applicant shall submit data pertinent to this rule, if available.

(3) Such system shall be fully guaranteed as to parts and workmanship for a period of not less than two years from date of purchase, and the manufacturer shall be prepared to provide maintenance and repair service for such system at a rate to be agreed upon by the manufacturer, dealer or agent of either and the purchasing entity.

(4) Each system or each component of any system shall remain operative and unimpaired in efficiency and accuracy in the physical and electrical environment normally found in polling places and other places used for election purposes, including places to which ballots are taken for purposes of tabulation.

(a) The system shall be so constructed as to operate in atmospheric temperatures ranging from 65 to 90 degrees Fahrenheit.

(b) The system shall be so constructed as to operate without being affected by variations in the voltage or amperage of the power supply normally found in places where it is to be used.

(c) Any system utilizing photoelectric or photosensitive components shall be so constructed that it will operate in the presence of light intensity on the order of that caused by the use of flashbulbs or other lighting, whether intermittent or continuous, used for photographic purposes.

(5) The system shall provide a mechanical or procedural means whereby an elector may cast a write-in vote for any person for any office, and whereby such elector shall be prevented from voting for another person for such office on the regular ballot.

(6) Automatic tabulating equipment shall provide a visible or audible signal to the operator thereof in the following cases.

(a) If a ballot cannot be tabulated by the system due to a physical defect in the ballot, the machine shall signal rejection of the ballot.

(b) If a ballot or part thereof has been overvoted because the elector has recorded vote intentions for a number of persons for an office in excess of the number he is entitled to vote for, the ballot tabulation program and hardware shall have the ability to so record and display a summary of the ballot overvote conditions.

(7) Where applicable no device shall be approved if the act of voting by an elector does not produce a visible effect upon the ballot, either by piercing thereof or by application of a visible substance to the ballot. (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-103](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79; [AMD](#), 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1704](#) CRITERIA OF EXAMINATION (1) The examination of a mechanical voting machine shall be conducted by the examiner or examiners to ensure that the machine meets the criteria set out in ARM [44.3.1703](#)(1) as well as:

(a) It shall be determined that if levers or buttons of any description are used as the method of casting a ballot that such levers or buttons will produce a positive vote regardless if they are fully depressed or not.

(b) If the system includes its own voting booth or compartment provision shall be made for a larger voting area which will accommodate a wheelchair and/or persons named to assist a handicapped elector.

(c) It shall be determined, in the judgment of the examiners whether or not the system complies with all other applicable requirements of the election laws.

(2) The examination of a voting device shall be conducted by the examiner or examiners as follows:

(a) It shall be determined that the criteria in ARM [44.3.1704](#) are met.

(b) By tabulation of the preprogrammed materials supplied under ARM [44.3.1702](#)(1) (e) , it shall be determined whether the tabulating apparatus will count accurately on no less than two nor more than five tabulations of the materials so supplied. Any difference in count on any tabulation of preprogrammed material shall be deemed a material cause for rejection of the system.

(c) A set of sample ballots, not less than 25 nor more than 100 in number, shall be marked or pierced at the site of the examination by a person present other than the applicant or his agent. Such set shall be tabulated no less than two nor more than five times. The failure of any subsequent tabulation to agree completely with the initial tabulation shall be deemed a material cause for rejection of the system.

(d) At least two of the ballots marked or pierced under ARM [44.3.1703](#)(1) (b) shall contain a vote for one office in excess of the number of votes which an elector would be entitled to cast for such office. Failure of the machine to reject such ballot shall be deemed a material cause for rejection of the system.

(e) The manufacturer or his agent shall demonstrate the extent to which bending, folding or otherwise abusing a ballot or ballot card is possible without causing said ballot or ballot card to be unusable in the tabulating equipment. If more than one per cent of the ballots marked or pierced at the site of the examination shall be rejected by the tabulating equipment for such cause, such rejection shall be deemed a material cause for rejection of the system.

(f) If the system being examined uses a paper ballot which is to be marked with ink or other visible substance, the manufacturer or his agent shall demonstrate the extent to which a mark may fail to cover the voting space, or fail to be in ideal position before the vote shall fail to be counted by the tabulating equipment.

(g) Failure of the tabulating equipment to count a vote cast because of the condition of the mark made thereon shall be deemed a material cause for rejection of the system, if, in the opinion of the examiners, such mark would have been counted for the person voted for if the ballots were manually tabulated. (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-101](#) , MCA; [NEW](#) , 1979 MAR p. 1693, Eff. 12/28/79; [AMD](#) , 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1705 COSTS OF EXAMINATION \(REPEALED\)](#) (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-102](#) , MCA; [NEW](#) , 1979 MAR p. 1693, Eff. 12/28/79; [REP](#) , 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1706 NOTIFICATION TO APPLICANT](#) (1) Within 30 days after completion of such examination, the Secretary of State or his deputy or deputies shall prepare and file in his office a report of his findings with respect to the system examined.

(2) A copy of such report shall be forwarded to the applicant at the address shown in his application for such examination.

(3) If the report approves the system, the Secretary of State shall mail a copy of said report to each election administrator of the state of Montana. (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-101](#) , MCA; [NEW](#) , 1979 MAR p. 1693, Eff. 12/28/79; [AMD](#) , 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1707 APPEAL FROM DISAPPROVAL](#) (1) If upon examination any system shall have been disapproved by the Secretary of State under these rules, the applicant may appeal therefrom by requesting reconsideration of the system so disapproved, under the following conditions:

(a) Such request for reconsideration shall be made within 60 days after applicant has been notified of the disapproval of the system presented for examination.

(b) Such request shall be in writing.

(c) Such request shall be limited to the grounds of disapproval as stated in the notification of the Secretary of State. The discovery or further explanation of advantages of the system not pertinent to the grounds upon which the system was disapproved shall not constitute an adequate cause for reconsideration.

(2) If the Secretary of State approves such request for reconsideration, he shall notify the applicant therefore in writing, and shall state the time and place fixed for reexamination of the system, if, in his opinion, reexamination is required. If reexamination is not required, he shall so state, and the matter of reconsideration may be consummated by mail, or by a hearing to be held at such time and place as the Secretary of State may fix. If a hearing is held, the Secretary of State shall make a full report of the same, shall file the same in his office and transmit a copy thereof to the applicant at the address stated in his application for reconsideration.

(3) If such reexamination, correspondence or hearing results in the approval of a system, the Secretary of State shall proceed to give notice of such approval in the manner provided in ARM [44.3.1706](#). (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-107](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79.)

[44.3.1708](#) WAIVER OF CONDITIONS (1) The Secretary of State may vary the time and place of examination fixed by ARM [44.3.1701](#)(4) and (5) and may waive any informality in the form of application or procedure followed in examination, if, in his opinion, such informality does not substantially affect the validity of his conclusions with respect to the system examined. (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-101](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79; [AMD](#), 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1709](#) EXPERIMENTAL USE OF VOTING MACHINES OR DEVICES (REPEALED) (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-105](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79; [REP](#), 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1710](#) EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES (1) Any system having been approved under rules previously promulgated by the Board of Election Devices or approved by the Secretary of State under prior citations of law shall continue to have approval under the application of these rules without reexamination. However, any contracts for purchase drawn after December 28, 1979, must contain the guarantees as provided in ARM [44.3.1703](#)(3) . (History: [13-17-107](#) (1) , MCA; [IMP](#), [13-17-101](#), MCA; [NEW](#), 1979 MAR p. 1693, Eff. 12/28/79.)

[44.3.1711](#) BENCHMARK PERFORMANCE STANDARD FOR VOTING SYSTEMS PRIOR TO CERTIFICATION (1) The benchmark performance standard for voting systems approved under [13-17-101](#), MCA, is based on commonly accepted industry standards for readily available technologies. These standards shall at the time of certification conform to all applicable federal requirements, as well as state requirements listed in the Montana Code Annotated and Administrative Rules of Montana. (History: [13-17-103](#), MCA; [IMP](#), [13-17-103](#), MCA; [NEW](#), 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1712 PERFORMANCE CERTIFICATION OF VOTING SYSTEMS PRIOR TO ELECTION (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The Secretary of State shall ensure that at least 10% of all voting systems in the state, including each model of each type of voting system, have been randomly tested and certified at least once every calendar year. This rule shall be implemented through review by the Secretary of State of its prescribed voting system testing and certification forms completed by the county. (History: 13-17-211, MCA; IMP, 13-17-212, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1713 UNIFORM PROCEDURES FOR USING VOTING SYSTEMS (1) For each voting system approved under 13-17-101, MCA, the system must comply, as applicable, with the following procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer and distributor of the system, as well as the election judge handbook provided by the office of the Secretary of State (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply) :

- (a) performance certification under 13-17-212, MCA;
- (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117 (2), MCA;
- (c) the procedures to be followed if the comparison under 13-15-206 (2) (b), MCA, reveals discrepancies;
- (d) how to operate and test the system during counts or recounts;
- (e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417, MCA; and
- (f) testing and certification of voting systems pursuant to 13-17-212, MCA, including a random test conducted by a county election administrator or designee of 5% of voting systems, a minimum of one per county, on election day, to validate the accuracy of voted paper ballots with the voting system results. (History: 13-17-211, MCA; IMP, 13-17-211, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1714 HANDLING VOTING SYSTEM ERROR DURING COUNT (1) During a count of paper ballots in which votes are being automatically tabulated by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested, as applicable, in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly, votes cast on paper ballots must be counted manually in accordance with [13-15-206](#) (2) , MCA. (History: [13-15-206](#) , [13-15-209](#) , MCA; [IMP](#) , [13-15-209](#) , MCA; [NEW](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1715](#) METHOD OF CORRECTION OF BALLOT (1) If an appointment has been made to replace a candidate, as provided in [13-10-326](#) , [13-10-327](#) , or [13-10-328](#) , MCA, or if a candidate for Lieutenant Governor has been advanced to the candidacy for Governor, as provided in [13-10-328](#) , MCA, after the ballots have been prepared but before the election, the election administrator may:

(a) correct the ballot in a manner consistent with the following:

(i) if the ballot is a paper ballot that is not produced for use with a voting system, follow the procedures in (1) (b) or (c) ;

(ii) if the ballot is a paper ballot that is produced for use with a voting system, correction of the ballot shall be in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply;

(b) have the entire ballot redone; or

(c) have a separate ballot prepared only for the office for which the new candidate is a candidate. (History: [13-12-204](#) , MCA; [IMP](#) , [13-12-204](#) , MCA; [NEW](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1716](#) REJECTED BALLOTS -- HANDLING PROVIDED BY RULE

(1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be enclosed in an envelope or container marked "REJECTED BALLOT(S) OF ABSENTEE ELECTORS".

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in [13-13-204](#) , MCA, must be marked "voted in person" and must be initialed by election judges.

(3) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order. (History: [13-15-108](#) , MCA; [IMP](#) , [13-15-108](#) , MCA; [NEW](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1717](#) SEALING BALLOTS AND VOTING SYSTEMS (1) When a recount of paper ballots that was conducted using a voting system has been finished, ballots must again be sealed in the same package or envelope (unless

the package or envelope is unusable) , in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply. All such procedures must ensure to the greatest degree possible the security of the voting systems from intentional and unintentional misuse.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody. (History: [13-16-417](#), [13-17-211](#), MCA; [IMP](#), [13-16-417](#), [13-17-211](#), MCA; [NEW](#), 2006 MAR p. 2671, Eff. 10/27/06.)

Rules 44.3.1718 through 44.3.1729 reserved

[44.3.1730](#) USE OF VOTING MACHINES AND DEVICES (REPEALED) (History: [13-17-107](#) (2) , MCA; [IMP](#), [13-17-101](#), MCA; [NEW](#), 1980 MAR p. 434, Eff. 2/1/80; [REP](#), 1996 MAR p. 3221, Eff. 12/20/96.)

[44.3.1731](#) PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - BEFORE THE POLLS OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA; [IMP](#), [13-12-201](#) through [13-12-208](#), [13-13-115](#), [13-17-206](#), MCA; [NEW](#), 1979 MAR p. 1520, Eff. 2/1/80; [REP](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1732](#) PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - WHILE THE POLLS ARE OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA; [IMP](#), [13-10-209](#), [13-13-114](#), [13-13-115](#), [13-17-305](#), MCA; [NEW](#), 1980 MAR p. 434, Eff. 2/1/80; [REP](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1733](#) PROCEDURES FOR USE OF IES (SHOUP) VOTING MACHINES - AFTER THE POLLS CLOSE (REPEALED) (History: [13-17-107](#) (2) , MCA; [IMP](#), [13-13-115](#), [13-13-117](#), [13-13-241](#), [13-13-242](#), [13-15-101](#), [13-15-201](#), [13-15-202](#), [13-15-204](#), [13-15-205](#), MCA; [NEW](#), 1980 MAR p. 434, Eff. 2/1/80; [REP](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1734](#) PROCEDURES FOR USE OF AVM (AUTOMATIC VOTING MACHINES) - BEFORE THE POLLS OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA; [IMP](#), [13-12-201](#) through [13-12-208](#), [13-13-115](#), [13-17-206](#), MCA; [NEW](#), 1980 MAR p. 434, Eff. 2/1/80; [REP](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.1735](#) PROCEDURES FOR USE OF AVM VOTING MACHINES - WHILE THE POLLS ARE OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA;

IMP, [13-12-209](#), [13-13-114](#), [13-13-115](#), [13-17-305](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1736 PROCEDURES FOR USE OF AVM VOTING MACHINES - AFTER THE POLLS CLOSE (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-13-115](#), [13-13-117](#), [13-13-241](#), [13-13-242](#), [13-15-101](#), [13-15-201](#), [13-15-202](#), [13-15-204](#), [13-15-205](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1737 DEFINITIONS - COMPUTER ELECTION SYSTEMS VOTOMATIC (CES) (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1737A PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) PRIMARY ELECTION (REPEALED) (History: [13-17-206](#), MCA; IMP, [13-17-206](#), MCA; NEW, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1738 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - BEFORE THE POLLS OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-12-201](#) through [13-12-208](#), [13-13-115](#), [13-17-206](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1739 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - WHILE THE POLLS ARE OPEN (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-12-209](#), [13-13-114](#), [13-13-115](#), [13-15-103](#), [13-17-305](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1740 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS VOTOMATIC - (CES) - AFTER THE POLLS CLOSE (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-13-115](#), [13-15-101](#), [13-15-201](#), [13-15-202](#), [13-15-204](#), [13-15-205](#), [13-17-117](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1741 CENTRAL COUNTING CENTER FOR TABULATION OF COMPUTER ELECTION SYSTEMS - VOTOMATIC (CES) BALLOTS (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1742 CENTRAL COUNTING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1743 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1744 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - INSPECTION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-13-117](#), [13-15-203](#), [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1745 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1746 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-13-117](#), [13-15-202](#), [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1747 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-1-303](#), [13-15-202](#), [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1748 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - BALLOT SEALING BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-1-303](#), [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1749 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-15-101](#), [13-17-107](#), MCA; NEW, 1980 MAR p. 434, Eff. 2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1750 CENTRAL COUNTING CENTER PROCEDURES AND DUTIES - CLOSING OF COUNTING CENTER (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-1-303](#), [13-17-101](#), MCA; NEW, 1980 MAR p. 434, Eff.

2/1/80; AMD, 1986 MAR p. 1703, Eff. 10/17/86; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

Rules 44.3.1751 through 44.3.1759 reserved

44.3.1760 DEFINITIONS - AMERICAN INFORMATION SYSTEMS (AIS-315) (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1761 BALLOT PREPARATIONS - AMERICAN INFORMATION SYSTEMS (AIS-315) (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1568, Eff. 10/18/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1762 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - BEFORE THE POLLS OPEN (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1763 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - WHILE THE POLLS ARE OPEN (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1764 PROCEDURES FOR USE OF AMERICAN INFORMATION SYSTEMS (AIS-315) - CENTRAL TABULATING SYSTEM - AFTER THE POLLS CLOSE (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1765 CENTRAL TABULATING CENTER PROCEDURES (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1766 CENTRAL TABULATING CENTER PROCEDURES AND BOARD DUTIES - OBSERVATION BOARD (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1767 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - RECEIVING BOARD (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1768 CENTRAL TABULATING CENTER PROCEDURE AND DUTIES - STAGING BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1769 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - BALLOT TABULATION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1770 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - DUPLICATION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1771 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - RESOLUTION BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1772 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - WRITE-IN TALLY BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1773 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - BALLOT SEALING BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1774 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - ELECTION RESULTS BOARD (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1775 CENTRAL TABULATING CENTER PROCEDURES AND DUTIES - CLOSING OF TABULATING CENTER (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) , MCA; NEW, 1985 MAR p. 1249, Eff. 8/30/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

Rules 44.3.1776 through 44.3.1780 reserved

44.3.1781 USE AND SCOPE - COMPUTER ELECTION SYSTEM OPTECH I (REPEALED) (History: [13-17-107](#) (2) , MCA; IMP, [13-17-107](#) (2) ,

MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1782 DEFINITIONS - COMPUTER ELECTION SYSTEMS OPTECH I (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1783 BALLOT PREPARATION - COMPUTER ELECTION SYSTEMS - OPTECH I (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1784 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - ACCURACY TESTING AND CERTIFICATION (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1785 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - BEFORE THE POLLS OPEN (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1786 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - WHILE THE POLLS ARE OPEN (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.1787 PROCEDURES FOR USE OF COMPUTER ELECTION SYSTEMS OPTECH I - AFTER THE POLLS CLOSE (REPEALED) (History: 13-17-107 (2) , MCA; IMP, 13-17-107 (2) , MCA; NEW, 1985 MAR p. 2040, Eff. 12/27/85; REP, 2006 MAR p. 2671, Eff. 10/27/06.)

Subchapters 18 and 19 reserved

Subchapter 20

Voter Registration

44.3.2001 VOTER REGISTRATION VERIFICATION (1) Consistent with 13-2-109, 13-2-110, 13-2-205, 13-2-207, and 13-2-304, MCA, the rules in this subchapter shall be used to determine whether information provided is sufficient to be accepted and processed, for verifying accuracy, establishing procedures for provisional and legal registration and effect on ID requirements, and notifying electors of their status. (History: 13-2-109, MCA; IMP, 13-2-109, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2002](#) **DEFINITIONS** As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Current address" means residence address or mailing address. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) "Driver's license number" means a number provided by the Montana Motor Vehicle Division on either a Montana Motor Vehicle Division driver's license or a Montana Motor Vehicle Division identification card.

(3) "Election official" means an election administrator, election deputy, or election judge.

(4) "Election worker" means an individual designated to perform election support duties.

(5) "Elector" means an individual qualified to vote under state law.

(6) "Identification" for the purposes of registration means any of the following:

(a) current and valid photo identification including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification with the individual's name; or

(b) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(7) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

(a) telephone;

(b) mail;

(c) facsimile machine;

(d) in person; or

(e) e-mail or other electronic means. (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2003](#) **APPLICATION FOR VOTER REGISTRATION** (1) Applicants for voter registration may apply by the procedures specified in [13-2-110](#) and [13-2-304](#), MCA:

(a) in person;

(b) by mail; or

(c) as may otherwise be provided by law. (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2004 VOTER REGISTRATION CARD (1) Election administrators shall use the voter registration card substantially in the most updated form prescribed by the Secretary of State.

(2) Only registration cards substantially in the form prescribed by the Secretary of State after June 1, 2003, shall be used by election administrators.

(3) Election administrators may print registration cards for their county use as long as the cards are substantially in the most updated form prescribed by the Secretary of State.

(4) If an applicant submits an outdated registration card that does not contain all of the required information, the election administrator may obtain that information and process the registration according to ARM 44.3.2005. (History: 13-2-109, MCA; IMP, 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS (1) An applicant for voter registration must provide all required information on the voter registration card.

(2) An election official shall:

(a) enter the driver's license number, or the last four digits of the social security number provided by the applicant on the voter registration card into the voter registration database maintained by the election administrator in a field provided for the number;

(b) ensure that the number remains private and accessible only by authorized county election officials and, when applicable, by the authorized staff of the office of the Secretary of State; and

(c) use the number as a unique identifier for voting purposes in addition to the voter registration number assigned to the elector.

(3) An applicant for voter registration who does not provide the applicant's driver's license number, the last four digits of the applicant's social security number, or a form of identification required in ARM 44.3.2002(6), shall be registered as a provisionally registered elector pending receipt and verification, at any time up to and including on election day, of one of the required numbers or receipt of a form of identification required.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the Secretary of State, the applicant shall be registered as "pending - incomplete" in the statewide voter registration database. ~~The applicant shall not be registered unless and~~ until the required information is provided. (History: 13-2-109, MCA; IMP, 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

Rules 44.3.2006 through 44.3.2009 reserved

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is not eligible to register because of residence or age requirements, but who will be eligible on or

before election day, may apply for voter registration pursuant to [13-2-110](#), MCA. The statewide voter registration database shall not include in the register the name of any individual who will not be at least 18 years of age on or before election day. (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), [13-2-205](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2011](#) PROVISIONAL REGISTRATION PENDING VERIFICATION

(1) All applicants for voter registration who apply under this subchapter shall be registered provisionally pending verification of the applicant's driver's license number or, if the applicant does not have a driver's license number, the last four digits of the applicant's social security number. If the applicant does not have a driver's license number or social security number, the applicant shall provide a form of identification required under [13-2-110](#), MCA, which, if accepted, shall be sufficient for verification under these rules. (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2012](#) VERIFICATION OF VOTER REGISTRATION INFORMATION

(1) If the information provided by an applicant for voter registration in [ARM 44.3.2011](#) is verified and the applicant meets all other legal requirements for registration, an election official shall register the applicant as a legally registered elector.

(2) Throughout the election process, an election administrator shall, as necessary, work in conjunction with the office of the Secretary of State, the Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of the information provided in [ARM 44.3.2011](#). (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2013](#) NOTICE TO APPLICANT OF STATUS OF APPLICATION FOR VOTER REGISTRATION (1) An election official shall confirm an elector's registration by a confirmation notice required under [13-2-207](#), MCA, which includes at minimum the elector's name, address, and precinct number.

(2) An election official shall provide notice by the most expedient method available to an applicant for voter registration whose voter registration is not confirmed. (History: [13-2-109](#), MCA; [IMP](#), [13-2-110](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2014](#) MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable--address correction requested" notice to all registered electors of each jurisdiction to

confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) Any notices returned to the election administrator after using the procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) A procedure used by an election administrator pursuant to this rule must be completed at least 90 days before a primary or general election for federal office.

(4) The election administrator shall cancel the registration of an elector if the elector fails to respond to certain confirmation mailings, is placed on the inactive list, and fails to vote in two consecutive federal general elections after being placed on the inactive list.

(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and appears in order to vote or votes by absentee ballot in any election.

(6) An elector reactivated pursuant to (5) is a legally registered elector for purposes of the election in which the elector voted. (History: [13-2-108](#), MCA; IMP, [13-2-220](#), MCA; [NEW](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2015 LATE REGISTRATION PROCEDURES](#) (1) In addition to and consistent with the procedures specified in the Montana Code Annotated, and due to administrative necessity, the following shall apply to late registration:

(a) Election administrators shall close late registration at noon on the day before election day. Any elector wishing to register after noon on the day before election day may do so by submitting a voter registration application at the county election administrator's office the day before election day or on election day during polling hours, and appearing at the county election office on election day in order to vote.

(2) Except as provided in (3) (a) , an elector who registers or changes the elector's voter information pursuant to this rule may vote in the election only if the elector votes at the county election administrator's office. For the purposes of this rule, voting at the county election administrator's office includes:

(a) immediately after registering under the procedures of this rule, receiving and casting an absentee ballot at the county election administrator's office; and

(b) at any time after registering under the procedures of this rule, receiving in person from the election administrator and returning an absentee ballot directly to the county election administrator's office, either in person or by mail, subject to applicable deadlines.

(3) An elector who changes residence to a different county within Montana 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the late registration provisions of [13-2-301](#) or [13-2-304](#), MCA.

(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot.

(5) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers:

(a) subject to 13-2-304(2), MCA, register the applicant in the statewide voter database as a duplicate voter;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors. (History: [13-2-108](#), MCA; IMP, [13-2-304](#), [13-2-514](#), MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE (1) In addition to the procedures specified under (2) , (3) , and (4) and ARM [44.3.2001](#), election officials authorized to use the statewide voter registration database must, as applicable, comply with the following procedures specified in the instruction manuals, user guides, and technical manuals as provided by the manufacturer and distributor of the database, (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply) :

(a) maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in [13-2-123](#), MCA;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to [13-2-115](#), MCA; and

(g) quality control measures for the system and system users.

(2) Consistent with (1) (d) , as soon as a county election administrator enters voter registration information into the statewide voter registration database, the database will automatically make that information available to the Secretary of State.

(3) Consistent with (1) (f) :

(a) the driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to [13-2-115](#), MCA, may not be provided unless required by a court order; and

(b) all identifying information about an individual protected from disclosure may not be provided, unless required by a court order.

(4) An elector who was properly registered prior to January 1, 2003, must be considered a legally registered elector. (History: [13-2-108](#), MCA; IMP, [13-2-108](#), MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

Subchapter 21

Voter Identification and Provisional Voting Procedures at the Polling Place

[44.3.2101](#) VOTER IDENTIFICATION AND PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - GENERAL (1) An election administrator shall follow [13-13-114](#), [13-13-301](#), [13-13-601](#), [13-15-107](#), MCA, and these rules in regard to voter identification and provisional voting at the polling place. (History: [13-13-603](#), MCA; IMP, [13-13-603](#), MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2102](#) DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Current address" means residence address, mailing address, or the precinct number that is preprinted on the voter confirmation notice issued pursuant to [13-2-207](#), MCA. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) "Driver's license number" means a number provided by the Montana Motor Vehicle Division on either a Montana Motor Vehicle Division driver's license or a Montana Motor Vehicle Division identification card.

(3) "Election official" means an election administrator, election deputy, or election judge.

(4) "Election worker" means an individual designated to perform election support duties.

(5) "Elector" means an individual qualified to vote under state law.

(6) "Identification" for the purposes of voting at the polling place, means any of the following:

(a) a current photo identification showing an elector's name including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification; or

(b) a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to [13-2-207](#), MCA, government check, or other government document that shows the elector's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(7) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

(a) telephone;

(b) mail;

(c) facsimile machine;

(d) in person; or

(e) e-mail or other electronic means.

(8) "Polling place elector identification form" means a form prescribed by the Secretary of State and printed by the election administrator that:

(a) requires an elector to provide the elector's current Montana residential address, current mailing address, signature, date of birth, and date;

(b) requires an elector to provide the elector's Montana driver's license number or Montana state identification number or, only if verification is available, the last four digits of the elector's social security number; and

(c) is permitted to be used by an elector at the polling place as a government document meeting the requirements of identification under (6), if the number provided under (8) (b) is verified.

(9) "Polling place greeter" means an election official or election worker who assists electors with voting procedures as they enter the polling place.

(a) "Polling place manager" means an election official who assists electors with voting procedures while they are inside the polling place. (History: [13-13-603](#), MCA; [IMP](#), [13-13-114](#), [13-13-601](#), [13-15-107](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2103](#) PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) Election administrators shall provide materials for provisional

voting in sufficient numbers for each election. These materials shall include at least the following, in forms prescribed by the Secretary of State:

- (a) provisional ballot instructions;
 - (b) provisional ballot outer envelopes;
 - (c) provisional ballot secrecy envelopes (colored and/or hole-punched for ease of identification) ;
 - (d) verified and unverified provisional ballot containers;
 - (e) displays of instructions for electors under [13-13-112](#), MCA;
 - (f) polling place elector identification forms as defined in ARM [44.3.2102](#)(8) ; and
 - (g) at the option of the election administrator, educational postings for outside of the polling place in the form suggested by the Secretary of State.
- (2) Election administrators shall use regular ballots for provisional voting. (History: [13-13-603](#), MCA; [IMP](#), [13-13-112](#), [13-13-603](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2104](#) ARRANGEMENTS FOR IDENTIFICATION AND PROVISIONAL VOTING PROCEDURES - BEFORE THE ELECTION (1)

Election administrators shall arrange for a secure location for ballots cast provisionally, in the same or similar location as for voted regular ballots.

- (2) Election administrators may at their option arrange for:
 - (a) polling place greeters who will inform electors of voting procedures;
 - (b) polling place managers to ensure ease of identification and provisional voting processes; and
 - (c) delivery and setup of educational materials to polling places for education of electors on voting procedures. (History: [13-13-603](#), MCA; [IMP](#), [13-13-603](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

Rules 44.3.2105 through 44.3.2108 reserved

[44.3.2109](#) PROCEDURES FOR CHALLENGES (1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

- (2) A challenge may be made on the grounds that the elector:
 - (a) is of unsound mind, as determined by a court;
 - (b) has voted before in that election;
 - (c) has been convicted of a felony and is serving a sentence in a penal institution;
 - (d) is not registered as required by law;
 - (e) is not 18 years of age or older;
 - (f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under [13-2-514](#), MCA, and has been a resident of the state for at least 30 days; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this rule:

(a) prior to the close of registration under [13-2-301](#), MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under [13-2-402](#), MCA; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in [13-15-107](#), MCA.

(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.

(5) The Secretary of State shall provide standardized affidavit forms for challengers and challenged electors.

(6) Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote. (History: [13-13-301](#), MCA; [IMP](#), [13-13-301](#), MCA; [NEW](#), 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2110](#) PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

(1) Consistent with [13-13-114](#), MCA, before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge one of the forms of required identification defined in ARM [44.3.2102](#)(6) .

(2) An election official shall allow an elector whose name appears on the precinct register, but who does not provide a required form of identification, to do the following:

(a) return to the polling place with a required form of identification; or

(b) complete a polling place elector identification form, as defined in ARM [44.3.2102](#)(8) .

(3) An elector who is otherwise eligible to vote and who provides a required form of identification shall be permitted to vote as follows:

(a) if the information on the form of identification provided is determined to be sufficient by an election official while the elector is at the polling place, the elector shall be provided a regular ballot to vote;

(b) if the information on the form of identification provided is determined to be insufficient by an election official while the elector is at the polling place, the elector shall be provided a provisional ballot to vote; and

(c) consistent with [13-13-114](#) (1) (c) and (d) , MCA, if the identification provided differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's identity to vote pursuant to [13-2-512](#) , MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(4) Consistent with [13-13-114](#) (3) and (4) , and [13-1-116](#) , MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in [13-13-601](#) , MCA, and these rules. (History: [13-13-603](#) , MCA; [IMP](#) , [13-1-116](#) , [13-13-114](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04; [AMD](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2111](#) PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1)

An individual who provides identification specified in ARM [44.3.2110](#), but whose name does not appear on the precinct register, shall be permitted to:

(a) provide information to an election official at the polling place to verify the individual's registration, subject to the following:

(i) an elector whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator or designee a certificate of the error, stating the precinct in which the elector is entitled to vote, and present the certificate (which will entitle the elector to vote a regular ballot) to an election judge;

(ii) the certificate shall be marked "voted" by the election judges and returned by them with the precinct register. The elector should sign the back of the precinct register or in a location specified by the county election administrator;

(iii) if the elector is for any reason unable to secure a certificate of error, the elector may vote by signing an oath that his name was erroneously omitted, if the election administrator or designee can confirm such omission by telephone to the chief election judge of the precinct. The oath shall be marked "voted" by the election judges and returned by them with the precinct register. The elector should sign the back of the precinct register or in a location specified by the county election administrator; and

(iv) if the election official is unable to verify the individual's eligibility while the elector is at the polling place, sign the precinct register and cast a provisional ballot.

(2) Consistent with [13-13-114](#) (1) (c) and (d) , MCA, if the information provided by the elector differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's eligibility to vote pursuant to [13-2-512](#) , MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(3) Consistent with [13-13-114](#) (3) and (4) , and [13-1-116](#) , MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in [13-13-601](#) , MCA, and these rules. (History: [13-13-603](#) , MCA; [IMP](#) , [13-13-114](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04; [AMD](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2112](#) PROCEDURES AT THE POLLING PLACE FOR CHALLENGES - PRIOR TO CASTING A BALLOT (REPEALED) (History: [13-13-603](#) , MCA; [IMP](#) , [13-13-301](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04; [REP](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2113](#) PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT (1) The election administrator shall direct election officials in each precinct to mark, in a location specified by the election administrator in the records maintained by election officials, a notation for each elector who has chosen to cast a provisional ballot.

(2) Consistent with [13-13-601](#) , MCA, an election official shall give to an elector who has been permitted the option of casting a provisional ballot the following, in the forms prescribed by the Secretary of State:

(a) instructions for casting a provisional ballot, which must be filled out by an election official in the areas specified;

(b) a provisional ballot outer envelope, which must be filled out by an election official in the areas specified;

(c) a provisional ballot secrecy envelope; and

(d) a regular ballot.

(3) The elector shall, upon receipt of the forms in (1) :

(a) read the instructions for casting a provisional ballot;

(b) fill out the specified areas of the provisional ballot outer envelope; and

(c) allow an election official to review the provisional ballot outer envelope that has been filled out by the elector.

(4) An election official, upon receiving the provisional ballot outer envelope from the elector, shall:

(a) ensure that the elector completed all required information on the provisional ballot outer envelope; and

(b) inform the elector that the elector may provide additional information at the elector's option.

(5) After the elector and the election official complete the requirements in this rule, the election official shall allow the elector to:

(a) sign the precinct register;

(b) cast the ballot;

(c) place the ballot in the provisional ballot secrecy envelope;

(d) place the provisional ballot secrecy envelope in the provisional ballot outer envelope; and

(e) return the provisional ballot outer envelope to an election official, who shall place the provisional ballot outer envelope into an unverified provisional ballot container.

(6) Consistent with [13-15-107](#), MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an elector whose voter information is verified by the close of the polls on election day as follows:

(a) remove the provisional ballot outer envelope from the unverified provisional ballot container;

(b) mark it to indicate the reason(s) why it was verified and removed;

(c) remove the provisional ballot secrecy envelope, which must be opened by the elector to remove the provisional ballot, which must then be deposited with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot;

(d) place the provisional ballot outer envelope in the verified provisional ballot container; and

(e) mark in the location specified by the election administrator that the ballot has been counted as any other ballot. (History: [13-13-603](#), MCA; [IMP](#), [13-13-114](#), [13-13-601](#), [13-15-107](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2114](#) PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) The election administrator shall direct election officials in each precinct, after the close of polls on election day, to tally the number of electors who have chosen to cast provisional ballots, but whose voter information is not verified by the close of the polls on election day, in a location specified by the election administrator in the records maintained by election officials.

(2) All information regarding electors who have chosen to cast provisional ballots shall remain private at all times prior to and during the counting of provisional ballots and shall not be released prior to and during the counting period without a court order.

(3) Election officials shall seal the unverified and verified provisional ballot containers and ensure delivery according to the election administrator's instructions.

(4) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

~~(4)~~(5) The election administrator shall, until 5:00 p.m. on the day after election day, allow electors who cast provisional ballots to verify eligibility to vote, in person, or by sending by facsimile or electronic mail a copy or scanned document.

~~(5)~~(6) The election administrator shall allow electors who cast provisional ballots to verify eligibility to vote, by mail postmarked on election day or the day after election day.

~~(6)~~(7) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to [13-13-114](#) (1) (a) , MCA, the election administrator or designee shall compare the elector's signature or the signature of an elector's agent designated pursuant to [13-1-116](#), MCA, on the affirmation required under [13-13-601](#), MCA, to the elector's or elector's agent's signature on the elector's voter registration card.

(a) If the signatures match, the election administrator shall handle the ballot as provided in [13-15-107](#) (6) , MCA.

(b) If the signatures do not match, and the elector fails to provide sufficient identification by the deadline, the ballot must be rejected and handled as provided in [13-15-108](#), MCA, and this section.

~~(7)~~(8) Consistent with [13-15-107](#), MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an elector whose voter information is verified after the close of polls on election day as follows:

(a) remove the provisional ballot outer envelope from the unverified provisional ballot container;

(b) mark it to indicate the reason(s) why it was verified and removed;

(c) remove the provisional ballot secrecy envelope, which must be opened to remove the provisional ballot, and which must then be grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot under ~~(8)~~(9); and

(d) place the provisional ballot outer envelope in the verified provisional ballot container.

~~(8)~~(9) Election officials must not begin the count of provisional ballots, cast by electors whose voter information is received and verified after the close of polls on election day, until 3:00 p.m. on the sixth day following the election.

~~(9)~~(10) Election officials must not count any provisional ballots cast by electors whose voter information is not verified by 3:00 p.m. on the sixth day following the election.

~~(10)~~(11) After the completion of the count of provisional ballots, election officials must assure the secrecy of the ballots. An election administrator shall not release any information regarding any ballot, including provisionally cast ballots, if that information will result in any person being able to determine how an elector voted on any race or issue on the ballot. (History: [13-13-603](#), MCA; IMP, [13-15-107](#), [13-15-301](#), MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04; AMD, 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2115](#) PROVISIONAL VOTING PROCEDURES - AFTER FINAL DETERMINATION WHETHER OR NOT TO COUNT PROVISIONAL BALLOTS

(1) Election officials, after making the final determination whether or not to count the ballot of each elector who cast a provisional ballot, shall:

(a) open the verified provisional ballot container, record on the provisional ballot outer envelope the reason(s) for counting the verified provisional ballots, and seal the verified provisional ballot container, which shall not be opened without a court order; and

(b) open the unverified provisional ballot container, and mark on each provisional ballot outer envelope that the elector's vote was not counted, and the reason why not, and all other applicable information, and seal the unverified provisional ballot container, which shall not be opened without a court order.

(2) Election officials or election workers shall notify each elector who cast a provisional ballot, by the most expedient means possible, whether or not the elector's vote was counted, and the reason(s) why or why not. (History: [13-13-603](#), MCA; [IMP](#), [13-15-107](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

Subchapter 22

Form of Absentee Ballot Application and Absentee Ballot Transmission to Election Administrator

[44.3.2201](#) FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR - GENERAL (1) Election officials and election workers shall follow Title 13, chapter 13, part 2, MCA, and these rules in regard to absentee applications. (History: [13-13-212](#), MCA; [IMP](#), [13-13-212](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2202](#) DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply: (1) "Election official" means an election administrator, election deputy, or election judge.

(2) "Election worker" means an individual designated to perform election support duties.

(3) "Elector" means an individual qualified to vote under state law. (History: [13-13-212](#), MCA; [IMP](#), [13-13-212](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2203](#) FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) Consistent with [13-13-212](#), MCA, an elector may apply for an absentee ballot by using a standardized form provided by rule by the Secretary of State, or by making a written request which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in [13-13-211](#), MCA.

(2) The minimum acceptable prescribed form for an application for an absentee ballot must include a written request for the absentee ballot, the elector's birth date, and the elector's signature. Additional recommended statements include the election for which the elector is requesting an absentee ballot and the address to which the elector wants the ballot mailed. Electors are strongly encouraged to use the form used by election administrators, which appears in the forms booklet that is provided by the Secretary of State to each election administrator.

(3) Consistent with [13-13-213](#) (1) , MCA, and except as provided in [13-13-213](#) (4) , MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to [13-1-116](#) , MCA, or a third party, may collect the elector's application and forward it to the election administrator.

(4) When applying for an absentee ballot under [13-13-212](#) , MCA, or at any other time by written request of the elector, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(5) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State, ~~at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections.~~ in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(6) The confirmation form specified under (5) shall be returned to the election administrator within the time period specified for receipt of absentee ballot applications under [13-13-211](#) , MCA.

(7) An elector who has been removed from the register of electors who have requested an absentee ballot for each subsequent election may subsequently request to be mailed an absentee ballot for each subsequent election. (History: [13-13-212](#) , MCA; IMP , [13-13-211](#) , [13-13-212](#) , [13-13-213](#) , MCA; NEW , 2004 MAR p. 93, Eff. 1/16/04; AMD , 2006 MAR p. 1741, Eff. 7/7/06.)

Subchapter 23

Voter Identification and Provisional Voting by Absentee and Mail Ballot

44.3.2301 **VOTER IDENTIFICATION AND PROVISIONAL VOTING BY ABSENTEE AND MAIL BALLOT - GENERAL** (1) Election officials and election workers shall follow [13-13-201](#), [13-13-204](#), [13-13-241](#), [13-13-602](#), and [13-15-107](#), MCA, and these rules in regard to voter identification and provisional voting by absentee and mail ballot. (History: [13-13-603](#), MCA; [IMP](#), [13-13-603](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2302 **DEFINITIONS** As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Absentee or mail ballot elector identification form" means a form prescribed by the Secretary of State and printed by the election administrator that:

(a) includes the elector's preprinted name and preprinted address;

(b) asks but does not require an elector to provide the elector's Montana driver's license number or Montana state identification number or the last four digits of the elector's social security number, and states that if the elector does not have any of the above, the elector may enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, and that if the elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address; and

(c) if sufficient, is permitted to be used by an absentee or mail ballot elector as a government document meeting the requirements of identification under (7) .

(2) "Current address" means residence address, mailing address, or the precinct number that is preprinted on the voter confirmation notice issued pursuant to [13-2-207](#), MCA. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(3) "Driver's license number" means a number provided by the Montana Motor Vehicle Division on either a Montana Motor Vehicle Division driver's license or a Montana Motor Vehicle Division identification card.

(4) "Election official" means an election administrator, election deputy, or election judge.

(5) "Election worker" means an individual designated to perform election support duties.

(6) "Elector" means an individual qualified to vote under state law.

(7) "Identification" for the purposes of voting by absentee and mail ballot means any of the following:

(a) a current photo identification showing the elector's name, including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification; or

(b) a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to [13-2-207](#), MCA, government check, or other government document that shows the elector's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(8) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

(a) telephone;

(b) mail;

(c) facsimile machine;

(d) in person; or

(e) e-mail or other electronic means. (History: [13-13-603](#), MCA; [IMP](#), [13-13-201](#), [13-13-214](#), [13-13-241](#), [13-13-602](#), [13-15-107](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2303](#) ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION

FORM (1) An election official or election worker shall enclose with the materials sent to each provisionally registered elector an absentee or mail ballot elector identification form defined under ARM [44.3.2302](#)(1) and prescribed by the Secretary of State. (History: [13-13-603](#), MCA; [IMP](#), [13-13-201](#), [13-13-603](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04; [AMD](#), 2006 MAR p. 1741, Eff. 7/7/06.)

[44.3.2304](#) PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION

(1) After completion of the signature verification procedures in [13-13-241](#) or [13-19-309](#), MCA, as applicable, the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM [44.3.2302](#)(7) to allow a ballot to be counted:

(a) If the identification is insufficient, an election official or election worker shall follow procedures described in [13-13-241](#), MCA, and these rules to allow a provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under [13-15-107](#), MCA;

(ii) an absentee or mail ballot elector whose ballot is determined to be provisional has until 5:00 p.m. on the day after the election to provide sufficient identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election;

(iii) an election official or election worker shall notify the absentee or mail ballot elector by mail or by the most expedient method available that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information under [13-13-114](#), MCA;

(iv) if the elector is notified by mail, an election official or election worker shall provide a self-addressed return envelope along with a description in the form prescribed by the Secretary of State of the information necessary for the absentee or mail ballot elector to reclassify the provisional ballot as a regular ballot; and

(v) to the extent applicable, an election official or election worker shall handle absentee and mail ballot elector provisional ballots in the same manner as specified under the procedures for provisional ballots cast at the polling place in ARM [44.3.2113](#), [44.3.2114](#) and [44.3.2115](#).

(b) Upon receipt of the absentee or mail ballot elector identification form, the election administrator shall accept as sufficient this properly completed form as one of the forms of required identification defined in ARM [44.3.2302](#)(7).

(c) If the absentee or mail ballot elector identification form is verified through a voter verification system or another form of identification provided in ARM [44.3.2302](#)(7) is sufficient, an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient identification was provided by the elector.

(d) An election official or election worker shall retain in a sealed package the copy of identification provided by the absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

(e) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003. (History: [13-13-603](#), MCA; IMP, [13-13-114](#), [13-13-201](#), [13-13-241](#), [13-19-309](#), MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04; AMD, 2006 MAR p. 1741, Eff. 7/7/06.)

[44.3.2305](#) PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - PRINTING ERROR OR BALLOT DESTROYED - FAILURE TO RECEIVE BALLOT

(1) Consistent with [13-13-204](#)(2), MCA, if an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the Secretary of State, swearing that the elector's ballot has not been received or was destroyed, and must provide a form

of identification defined in ARM [44.3.2302](#)(7) . The ballot must be handled as a provisional ballot under [13-15-107](#) , MCA, and these rules, and will be counted unless the election administrator determines that the elector has already voted.

(2) An election administrator who determines that the identification provided by an elector under (1) is insufficient shall follow ARM [44.3.2304](#) to allow the elector to provide sufficient identification.

(3) An election administrator shall follow [13-19-305](#) and [13-19-313](#) , MCA, in regard to replacement ballots, signature verification, and procedural mistakes for mail ballot voting, and shall require that the elector provide a form of identification defined in ARM [44.3.2302](#)(7) . The ballot must be handled as a provisional ballot under [13-15-107](#) , MCA, and these rules, subject to a determination of whether the elector has already voted.

(4) An election administrator who determines that the identification provided by an elector under (3) is insufficient shall follow ARM [44.3.2304](#) to allow the elector to provide sufficient identification. (History: [13-13-603](#) , MCA; IMP, [13-13-204](#) , [13-13-603](#) , [13-15-107](#) , [13-19-313](#) , MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Subchapter 24

Ballot Form and Uniformity and Determining a Valid Vote

[44.3.2401](#) **BALLOT FORM AND UNIFORMITY** (1) The following shall be prescribed by the Secretary of State in the forms booklet and election judge handbook, as applicable, that are provided to each election administrator:

(a) the manner in which each type of ballot may be corrected under [13-12-204](#) , MCA;

(b) what provisions must be made on the ballot for write-in candidates;

(c) the size and content of stubs on paper ballots, except as provided in [13-19-106](#) (1) , MCA;

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; and

(f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding [13-19-106](#) (1) , MCA, when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in [13-25-101](#) (2) , MCA.

(5) Consistent with [13-14-212](#) , MCA, provision must be made for a voter to indicate a "yes" or "no" vote in regard to retaining unopposed incumbent judicial officers.

(6) Consistent with [13-13-205](#), MCA:

(a) The election administrator shall ensure that ~~paper~~ ballots are printed ~~and available for absentee voting~~ at least:

(i) 30 days prior to an election for those elections held in compliance with [13-1-107](#) (1), MCA;

(ii) 20 days prior to an election for those elections held in compliance with [13-1-104](#) (2) and (3) and [13-1-107](#) (2), MCA; ~~and~~

(b) 45 days prior to an election held in conjunction with a federal general election in compliance with [13-1-104](#) (1), MCA-;

~~(c) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, MCA, may be sent to the elector as soon as the ballot is printed; and~~

~~(e)(d)~~ If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to [13-27-410](#), MCA. (History: [13-12-202](#), MCA; ~~IMP~~, [13-12-202](#), MCA; ~~NEW~~, 2004 MAR p. 93, Eff. 1/16/04; ~~AMD~~, 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2402](#) DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Before being counted, each questionable vote on a paper ballot set aside under [13-15-206](#) (2) (a) or (3) (b), MCA, must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) The following general rules shall apply in a count or recount of paper and opti-scan ballots:

(a) two (or more) designated voting areas have been marked and one (or more) mark has been erased, but residue is left. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(b) one designated voting area is marked and a second designated voting area is marked with a heavy mark and no erasure has been attempted. The election official shall cause this to be counted as an overvote;

(c) the designated voting area has been marked for one response and a partially completed mark is made in a designated voting area. The mark may or may not have some erasure although for the purpose of this rule erasure is not required. The election official shall cause this to be counted as an overvote;

(d) the designated voting area has been marked for one response and a hesitation mark is present within other designated voting area. The election

official shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(e) the designated voting area has not been marked according to instructions but the response is circled. The election official shall clarify the ballot by marking the designated voting area beside the circled vote if the marking of the designated voting area is consistent throughout the individual's ballot, and cause a vote to be counted for the marked designated voting area;

(f) the designated voting area has not been marked according to instructions but there is a connective line or arrow between the response and the designated voting area to indicate the vote. The election official shall clarify the ballot if the connective line or arrow beside the designated voting area is consistent throughout the individual's ballot, and cause a vote to be counted for the marked designated voting area;

(g) more than one designated voting area has been marked, but no clear mark is used to indicate the correct vote. This includes, but is not necessarily limited to, instances in which an "X" has been marked in either or both of the designated voting areas. The election official shall cause this to be counted as an overvote;

(h) more than one designated voting area has been marked, but a clear word, mark or statement is used to indicate the correct vote. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area indicated as the correct vote;

(i) a word or statement has been used to indicate the correct vote instead of marking the designated voting area. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area indicated as the correct vote;

(j) all of the designated voting areas are crossed out. The election official shall clarify the ballot and cause this to be counted as an undervote. (History: [13-15-206](#), MCA; [IMP](#), [13-15-206](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1)

Before being counted, each questionable write-in vote on a paper ballot set aside under [13-15-206](#) (2) (a) or (3) (b) , MCA, must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to the rules below:

(a) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(b) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(2) Except as provided in (3), only votes for declared write-in candidates shall be counted. Except as provided in ARM [44.3.2405](#), a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations

filed pursuant to [13-10-211](#) (1) (a) , MCA. The following rules shall apply to determining a valid write-in vote in a count or recount of paper and opti-scan ballots:

(a) no candidate name or office written in, but the designated write-in voting area is marked and no other candidate is selected. The election official shall count this as an undervote;

(b) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election official shall count this as a vote for the printed candidate;

(c) a printed candidate is selected by marking of the designated voting area, any name is written in and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election official shall count this as an overvote. If the name written in is the same as the name of the printed candidate selected, the election official shall count this as a vote for the printed candidate selected.

(d) the designated voting area for a printed candidate is marked and the same name is written in but the designated write-in voting area is not marked. The election official shall count this as a vote for the marked designated voting area;

(e) comments are written in which do not indicate a clear vote, and no candidate is marked. The election official shall count this as an undervote;

(f) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election official shall count this as a vote for the printed candidate, unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election official shall count this as an undervote.

(3) Consistent with [13-10-211](#) , MCA, votes for undeclared write-in candidates may be counted if:

(a) an election is held;

(b) a person's name is written in on the ballot;

(c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent. (History: [13-15-206](#) , MCA; [IMP](#) , [13-10-211](#) , [13-15-206](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04; [AMD](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

[44.3.2404](#) DETERMINING A VALID VOTE ON AN ELECTRONIC VOTING SYSTEM (1) A vote on an electronic voting system consists of a voter's selection of a candidate or answer to a ballot question appearing on the voting surface of the device, followed by the voter activating the cast vote indicator.

(a) All electronic voting system equipment shall provide for the use of a device for the voter to enter the name of a write-in candidate where applicable. Except as provided in ARM [44.3.2405](#), a write-in vote may be counted only if the

write-in vote identifies an individual by any of the designations filed pursuant to [13-10-211](#) (1) (a) , MCA.

(b) If a voter does not mark a candidate, judicial retention choice, or issue choice, the valid votes for other candidates or issues on the same ballot shall be counted. (History: [13-15-206](#) , MCA; [IMP](#) , [13-15-206](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04; [AMD](#) , 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2405 DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT (1) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) Except as provided in (2)(a), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(a) If the elector is voting in a primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted. (History: ~~13-15-206~~, [13-21-103](#), MCA; [IMP](#) , [13-21-205](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2406 APPLICABILITY TO ELECTIONS ALLOWING VOTES FOR MORE THAN ONE CANDIDATE FOR A POSITION (1) The rules in this subchapter shall be applied consistently with necessary adjustments for elections in which electors may cast votes for more than one candidate for a position. (History: [13-15-206](#) , MCA; [IMP](#) , [13-15-206](#) , MCA; [NEW](#) , 2004 MAR p. 93, Eff. 1/16/04.)

Subchapter 25

United States Electors

44.3.2501 UNITED STATES ELECTORS (1) The following rules shall be followed, consistent with the Montana Absent Uniformed Services and Overseas Elector Voting Act, Title 13, chapter 21, MCA, in regard to United States electors:

(a) an individual must notify the county election official that the individual is a United States elector in order to come under the provisions of the Montana Absent Uniformed Services and Overseas Elector Voting Act;

(b) pursuant to [13-21-201](#), MCA, there is no limit on the earliest date that a United States elector may request an absentee ballot;

(c) in receiving absentee ballots, United States electors must be given priority to receive ballots as soon as they are available, if possible before the 30-day deadline for making them available;

(d) in even-year general elections, election administrators must notify United States electors that the voter information pamphlet is available online, which can be accomplished through either:

(i) the absentee elector instructions; or

(ii) a special insert in materials provided to the absentee elector. (History: [13-21-104](#), MCA; [IMP](#), [13-21-201](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2502](#) FACSIMILE MACHINE ACCESS (1) A county election administrator desiring to offer this service, must use a facsimile machine that is secure from unauthorized access. Access to the facsimile machine must be limited by the following means:

(a) it is physically located in the office of the election administrator; or

(b) it has the technological ability to store the ballots that are faxed and that ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies. (History: [13-21-104](#), MCA; [IMP](#), [13-21-207](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2503](#) HANDLING OF FACSIMILE BALLOTS (1) Facsimile ballots for United States electors shall be handled in the same manner as absentee ballots when the facsimile balloting rules do not specify procedure. (History: [13-21-104](#), MCA; [IMP](#), [13-21-207](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2504](#) BALLOT TRANSMISSION (1) Upon request for a facsimile ballot, an election administrator who has received a valid application from a United States elector shall send by facsimile transmission a ballot and a transmission slip containing instructions to the elector and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges.

(2) The original transmission slip and original ballot shall be retained in a secure absentee envelope. (History: [13-21-104](#), MCA; [IMP](#), [13-21-207](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

[44.3.2505](#) RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine, they shall be checked by the election administrator to ensure that they are:

(a) readable in that the transmission has not made it impossible for the election judges to determine the elector's intentions; and

(b) the elector has signed an affirmation. (History: [13-21-104](#), MCA; [IMP](#), [13-21-207](#), MCA; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2506 BALLOT LOG (1) The election administrator shall keep an official log of all ballots transmitted and received via a facsimile device. (History: 13-21-104, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2507 ELECTOR AFFIRMATION (1) If the affirmation is missing or the ballot unreadable, the election administrator shall attempt to notify the elector of this problem. (History: 13-21-104, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2508 BALLOT ACCEPTANCE (1) If the returned faxed ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed. (History: 13-21-104, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2509 TRANSCRIPTION OF BALLOTS (1) On or before election day, the election administrator shall have the ballots transcribed using the procedure prescribed for assistance to voters with disabilities.

(2) No less than two election judges shall participate in the transcription process to transfer the elector's vote from the faxed ballot to the standard ballot used in the precinct.

(3) There may be noted next to the elector's name in the precinct register "Fax Ballot".

(4) A faxed ballot identifying number shall be written on the original transcribed ballot and the facsimile ballot.

(5) The election judges who transcribed the ballot shall sign in the log next to the name of the elector. (History: 13-21-104, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2510 ELECTION JUDGES AND BALLOT SECRECY (1) No one participating in the fax ballot process may reveal any information about the elector's ballot. (History: 13-21-104, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow United States electors to receive and transmit election materials electronically, as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) A county election administrator desiring to offer electronic transmission of voting materials must use a system that is secure from unauthorized access. Access to the system must be limited by the following means: it has the

technological ability to store the ballots that are sent and received by electronic transmission, and ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies.

(b) Upon request for electronic transmission of a ballot, an election administrator who has received a valid application from a United States elector shall, subject to (1), send by electronic transmission a ballot, instructions to the elector, and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges. The original instructions and original ballot shall be retained in a secure absentee envelope.

(c) The election administrator shall keep an official log of all ballots transmitted and received electronically.

(d) If the returned electronically transmitted ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot until the ballots are ready to be transcribed.

(e) On or before election day, the election administrator shall have the electronically transmitted ballots transcribed using the procedure prescribed for assistance to voters with disabilities.

(f) No less than two election judges shall participate in the transcription process to transfer the elector's vote from an electronically transmitted ballot to the standard ballot used in the precinct.

(g) There may be noted next to the elector's name in the precinct register "Electronically Transmitted Ballot".

(h) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot and the electronically transmitted ballot.

(i) The election judges who transcribed the electronically transmitted ballot shall sign in the log next to the name of the elector.

(j) No one participating in the electronic ballot transmission process may reveal any information about the elector's ballot.

(2) Nothing in this rule shall prohibit a county election official from participating in any secure program for facilitating voting by United States electors which is sponsored by an agency of the federal government. (History: ~~13-21-104~~, 13-21-207, MCA; IMP, 13-21-104, MCA; NEW, 2006 MAR p. 2671, Eff. 10/27/06.)

Subchapter 26

Administrative Complaint Procedures

44.3.2601 ADMINISTRATIVE COMPLAINT PROCEDURES (1) The procedures in this rule shall be uniform and nondiscriminatory.

(2) Under this rule, any individual who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002 (hereinafter referred to as Title III) , or 13-13-601, 13-13-602, or 13-13-114, MCA, including

a violation which has occurred, is occurring, or is about to occur, may file a complaint.

(3) Any complaint filed under this rule shall be in writing and notarized, and signed and sworn by the individual filing the complaint, and include the full name, telephone number, and mailing address of the complainant.

(4) The Secretary of State may consolidate complaints filed under this rule.

(5) The Secretary of State shall designate a presiding officer for any complaint under this rule. The Secretary of State may, upon agreement of all the parties, resolve the complaint informally, and issue a final determination without a formal proceeding.

(6) At the request of the complaint, there shall be a hearing on the record. If a hearing shall be held at a date and time and place determined by the presiding officer and at the officer's discretion, the hearing may be conducted by telephone or upon written documentation. If the hearing is on consolidated complaints, then the complainants shall designate a single representative party to advocate for the consolidated complaint. If the presiding officer permits witnesses to testify, then they must be sworn in prior to their testimony being given. If a complainant fails to pursue a complaint, then the complaint shall be dismissed with prejudice.

(7) If, under this rule, the presiding officer determines that there is a violation of any provision of Title III or [13-13-601](#), [13-13-602](#), or [13-13-114](#), MCA, the Secretary of State shall provide an informal opinion.

(8) If, under this rule, the Secretary of State determines that there is no violation, or that the complainant did not follow the above procedures in filing the complaint, or the complaint does not on its face allege a violation of Title III with regard to a federal election, or a violation of [13-13-601](#), [13-13-602](#), or [13-13-114](#), MCA, with regard to a federal or state election, the Secretary of State shall dismiss the complaint and publish the results of the procedures.

(9) The Secretary of State shall make a final determination with respect to a complaint prior to the expiration of the 90-day period that begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(10) If the Secretary of State fails to meet the deadline applicable under this rule, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this rule. The record and other materials from any proceedings conducted under the complaint procedures established under this rule shall be made available for use under the alternative dispute resolution procedures.

(11) At any time before, during or prior to this process the complainant retains the right to file an action in any court of appropriate jurisdiction or to withdraw the complaint. No exhaustion of this administrative remedy is required. (History: [13-1-202](#), MCA, Public Law 107-252; [IMP](#), [13-1-202](#), MCA, Public Law 107-252; [NEW](#), 2004 MAR p. 93, Eff. 1/16/04; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.)

CHAPTER 9: MAIL BALLOT ELECTIONS

Sub-Chapter 1

Introduction and Intent

[44.9.101 INTRODUCTION, SCOPE AND INTENT](#) (1) The mail ballot election option is established to increase the alternatives available to local election officials and governing bodies of affected jurisdictions as they seek to provide for representative government in the most cost-effective manner.

(2) It is intended that use of the mail ballot procedures is entirely optional and within the discretion of the affected jurisdiction and election administrator. Nothing in these rules should be interpreted as requiring either the election administrator or the applicable jurisdiction to select or use the mail ballot option.

(3) The mail ballot option is not authorized for those elections specifically enumerated in the Act. It is intended that the option be used only for those elections for which circumstances make it potentially the most desirable of the available options. (History: Sec. [13-1-202](#) and [13-19-105](#), MCA; [IMP](#), Sec. [13-19-101](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1998 MAR p. 1285, Eff. 5/15/98.)

[44.9.102 ROLE OF THE SECRETARY OF STATE](#) (1) The secretary of state is empowered under the Act to:

(a) prescribe the for of materials to be used in the conduct of mail ballot elections;

(b) review written plans for the conduct of each mail ballot election conducted under the Act; and

(c) adopt rules to establish and maintain uniformity in the conduct of mail ballot elections and establish procedures that:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of the voted ballots is maintained.

(2) These are the rules adopted to establish and maintain uniformity in the conduct of mail ballot elections and to establish procedures that prevent fraud, and insure accuracy and secrecy. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85.)

[44.9.103 DEFINITIONS](#) (1) In addition to the terms defined in the Act, and unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Transmittal envelope" is the envelope in which the ballot, instructions for voting, ballot secrecy envelope and return/verification envelope are mailed to each individual elector eligible to vote in the election.

(b) "Ballot packet" is the transmittal envelope after it has been assembled to contain all of the materials to be mailed in that envelope and has been addressed to a particular elector.

(c) "Absentee voting" is voting that takes place after ballots are available and before they are mailed to electors.

(d) "The Act" means Chapter 196 of the Laws of Montana, 1985. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-102](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

Sub-Chapter 2

Procedure to Initiate Conduct of Election by Mail Ballot

44.9.201 INITIATION OF USE IN MULTI-COUNTY DISTRICT

(1) Some special districts authorized to conduct elections using the mail ballot procedure are not confined within the boundary of a single county. When such a district desires to conduct an election by mail ballot, these are the procedures to be followed in initiating such an election.

(2) If the initiative is taken by the applicable governing body, it shall proceed as provided in section 8 of the Act, except that the requesting resolution shall be addressed to the election administrator in each affected county.

(3) Each election administrator involved may make their own independent judgment as to whether the mail ballot election will be used for that election in the portion of the district which lies within their county.

(4) Unless each affected election administrator agrees, the mail ballot option may not be used to conduct the election in that district or any portion thereof.

(5) The election administrators may cooperate in the initiation and conduct of an election under the mail ballot procedures in a multi-county district. They shall designate one person as the chief election administrator for the conduct of that single election in that district.

(6) If the initiative for the use of the mail ballot option in a multi-county district is taken by the election administrators, then they shall proceed as provided in section 9 of the Act, except that some form of written concurrence to both the written plan and the designation of a chief election administrator shall be signed by each election administrator involved and accompany the written plan. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-201](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85.)

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) The written plan for the conduct of an election or elections held on the same election day shall at least include:

(a) a statement indicating the type of jurisdiction involved including sufficient information to demonstrate that it is in fact one of the jurisdictions for which the mail ballot option is available;

(b) a description of the type of election to be conducted;

(c) the estimated number of eligible electors in the jurisdiction at the time the plan is written;

(d) if the jurisdiction is a multi-county district, a listing of the other election administrators involved and a statement designating which one will function as the chief election administrator for that specific election;

(e) if the election is for school district purposes designate who will conduct the election--school district clerk (election administrator) or county election administrator;

(f) if proportional voting is required, a reference to the applicable statute and a complete description of the method to be used to satisfy the statutory requirements for proportional voting;

(g) if voting is permitted by electors who are eligible but otherwise not registered, a description of the eligibility requirements;

(h) the total number of "Places of Deposit" contemplated, if any, together with the address of each and a description of its nature;

(i) a written timetable for the conduct of the election prepared in accordance with the specifications set forth in ARM [44.9.203](#) below;

(j) an indication of how postage will be handled for:

(i) returned as undeliverable (e.g. "return postage guaranteed") ; and

(ii) returns (e.g. elector to apply own postage or postage pre-paid, how) ;

(k) if the election is for school district purposes, a brief narrative of the procedures to be followed from the time the ballots are received from the electors until they are tabulated, including arrangements made for transfer of ballots

from/to the school district clerk and the county election administrator for verification of signatures;

(l) a description of the procedures to be used to ensure ballot security at all stages of the process. (History: . [13-19-105](#) , MCA; [IMP](#) , Sec. [13-19-205](#) , MCA; [NEW](#) , 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1987 MAR p. 2394, Eff. 12/25/87; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.203](#) WRITTEN TIMETABLE SPECIFICATIONS (1) The election administrator shall prepare a written timetable for the conduct of the mail ballot election. The timetable shall be in check-off form. It may contain additional activities and may be arranged in a different chronological order but otherwise shall be in substantially the following form:

CALENDAR DATE ACTIVITY	
_____	Copy of written plan to governing body.
_____	Last day for governing body to opt out.
_____	Submission of written plan to secretary of state's office.
_____	Approval by secretary of state.
_____	Publish notice specifying close of registration as provided by _____ ; 13-2-301 , MCA.
_____	Close of registration as provided by 13-2-301 , MCA.
_____	Ballots mailed.
_____	Election day.

(History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-205](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1987 MAR p. 2394, Eff. 12/25/87; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.204](#) PROPORTIONAL VOTING (1) Some of the special districts authorized to conduct elections using the mail ballot procedure require votes to be cast and/or counted in proportion to property ownership or some factor other than one vote per person. When such is the case, the election administrator shall:

(a) make a determination as to whether the particular proportional voting requirements can be satisfied using the mail ballot procedures; and

(b) if so, include in the written plan the specific methods and procedures which will be used to implement the statutory requirements for proportional voting in that election. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-302](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85.)

Sub-Chapter 3

Mail Ballot Election Procedures

[44.9.301](#) PROCEDURES FOR VOTING IN PERSON (1) In certain instances where the mail ballot election option is being used, some electors may vote in person at a designated location.

These instances may include:

(a) voting by an elector who will be absent from his place of residence during the conduct of the election;

(b) voting by nonregistered but otherwise qualified electors; and

(c) electors requesting a replacement ballot.

(2) Any elector voting in person shall proceed as provided in section 16 of the Act. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-303](#) and [13-19-304](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.302](#) DISPOSITION OF BALLOTS VOTED IN PERSON (1) A ballot voted in person shall be processed in the following manner:

(a) If the affidavit on the return/verification envelope is signed in the presence of an election official after proof of identification or upon the oath of the elector duly administered, then the witnessing official shall so note on the envelope near the signature and process the vote without further signature verification.

(b) Election officials shall assure that the full name and address of the elector is printed on the return/verification envelope in the space provided.

(2) A log, in a form prescribed by the secretary of state, shall be kept and every instance of voting in person shall be recorded. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-308](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85.)

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS (1)

Some elections authorized to use the mail ballot procedure do not require an otherwise qualified elector to be registered. Certain provisions must therefore be made to allow any such qualified electors to participate in that election.

(2) When such an individual appears in person and demonstrates an eligibility to vote as provided in [7-13-2212](#), [7-33-2106](#), [85-7-1710](#), [85-8-305](#), MCA or a similar section, he must be allowed to vote, by either:

(a) voting in person at that time, provided the ballots are available, and in the manner provided in ARM [44.9.301](#) and ARM [44.9.302](#) above; or

(b) completing and signing, for subsequent signature verification purposes, an absentee request as provided in Title 13, chapter 13, part 2, MCA.

(3) In each case of voting by a nonregistered but otherwise eligible elector, officials shall:

(a) duly note the elector's nonregistered status on the return/verification envelope, either at the time of voting if in person, or prior to mailing; and

(b) enter the elector's name in the register, on an addendum page provided for that purpose, and include all names so entered in their register reconciliation. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-304](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

44.9.304 DESIGNATION OF MAILING ADDRESS OR ALTERNATIVE ADDRESS (1) In certain instances electors may designate the address to which their ballot is to be mailed. These instances include:

(a) electors who will be absent from their place of residence during the conduct of the election; and

(b) if applicable, electors who are not registered but are otherwise entitled to vote in that election and who do not wish to appear and vote in person.

(2) In these cases, and after complying with the requirements of law, the elector may designate the address to which his ballot is to be mailed by completing an absentee request as provided in Title 13, chapter 13, part 2, MCA, until noon the day before ballots are scheduled to be mailed. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-303](#) and [13-19-304](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

44.9.305 REPLACEMENT BALLOTS (1) Replacement ballots are provided in order to afford to the elector a maximum opportunity to participate, recognizing that the mail ballot procedure subjects a ballot to unusual circumstances and potential destruction. While control of replacement ballots is strictly defined, every attempt should be made to facilitate and provide for the unique needs of an elector.

(2) Replacement ballots must be requested in writing as provided in section 17 of the Act. However, a Replacement Ballot Request, in a form prescribed by the secretary of state, may be delivered to an elector in response to any type of request.

(3) In each case where an appropriate request for a replacement ballot has been received, the election administrator shall:

(a) prior to mailing the replacement ballot, check the register to verify that the elector is entitled to vote and has not at that point done so;

(b) note in the register that a replacement ballot has been mailed and the date;

(c) indicate on the return/verification envelope that it is a "REPLACEMENT BALLOT"; and

(d) enter in the log he maintains for that purpose, the record of a replacement ballot having been issued.

(4) Replacement ballots subsequently voted and returned by an elector shall be processed according to the established procedures. Particular care shall be taken to ~~insure~~ ensure that no more than one ballot is validated from any elector and any attempt to vote more than once shall be reported as required by the Act. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-305](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.306](#) DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE

(1) Ballots returned by the post office as undeliverable should be filed and shall be securely retained.

(2) Whenever election officials are notified by an elector that the elector has not received a ballot, they may:

(a) check the ballots which have been returned as undeliverable;

(b) if the elector's ballot is found there, then deliver it to the elector either in person or, after address verification, by mail;

(c) provide a Change of Address card if appropriate; and

(d) make the appropriate notation in the daily Ballot Return Log.

(3) Redelivery of a ballot which had been returned as undeliverable is not synonymous to providing a replacement ballot.

(4) The retention and disposition of undeliverable ballots shall be as provided by law for all election materials. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-206](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.307](#) PLACES OF DEPOSIT (1) The Act provides that the election administrator may designate one or more places within the political subdivision in which the election is conducted as places of deposit where ballots may be returned by the elector.

(2) Whenever a place of deposit is designated, the election administrator shall also designate a person to be responsible for all mail ballot election procedures at that place of deposit. Such designated person shall:

(a) be duly appointed and deputized as provided by law;

(b) take and subscribe to the appropriate oath of office;

(c) serve for the duration of the conduct of that specific election;

(d) be duly trained by the election administrator;

(e) be personally available at such place of deposit during a substantial portion of the hours that it is open for business;

(f) personally insure that all required procedures are adhered to; and

(g) personally ensure that all ballots and other official materials in his possession are and remain secure at all times.

(3) The election administrator shall provide a transport box, secured as required, for the deposit of ballots returned to each place of deposit. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-307](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85.)

[44.9.308](#) PROCEDURES WHEN BALLOTS RETURNED TO PLACES OF DEPOSIT (REPEALED) (History: Sec. [13-19-105](#), MCA; [IMP](#), [13-19-306](#) and [13-19-307](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; [REP](#), 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.309](#) PROCEDURES FOR TRANSPORTING BALLOTS (1) Whenever the mail ballot option is used, ballots may need to be transported from places of deposit, or in the instance of school district elections, conducted by the school district clerk (election administrator) , to and from the county election administrator.

(2) The procedures for transporting ballots shall be substantially similar to procedures used to transport ballots in a regular election. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1987 MAR p. 2394, Eff. 12/25/87; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.310](#) PROCEDURES TO SECURE BALLOTS (1) Ballots and related materials must be secure at all times.

(2) The procedures to secure ballots and materials shall be substantially similar to procedures used to secure ballots in a regular election. (History: Sec. [13-19-105](#), MCA; [IMP](#); Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.311](#) RECORDS OF BALLOTS RECEIVED (1) The election administrator shall record in a log he maintains for that purpose the number and source of all ballots received at the processing center including:

(a) the number of ballots received daily from the post office;

(b) the number of ballot packets returned as undeliverable each day;

(c) the number of ballots returned or voted in person each day; and

(d) the number of ballots received from any place of deposit on the day they are transported to the processing center. (History: Sec. [13-19-105](#), MCA; [IMP](#), [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85.)

[44.9.312](#) SIGNATURE VERIFICATION PROCEDURES (1) For the purpose of school district elections conducted by the school district clerk (election

administrator) signature verification shall be conducted by the county election administrator. This is accomplished as follows:

(a) arrangements shall be made by the school district clerk (election administrator) for the transport of ballots to and from the county election administrator for signature verification in compliance with ARM [44.9.309](#) and [44.9.310](#);

(b) unopened return/verification envelopes shall be counted by the school district clerk (election administrator) placed in transport boxes and the number of return/verification envelopes recorded on the ballot transport logs which are to be sealed inside the transport boxes;

(c) the county election administrator shall break the seal on the transport boxes and verify signatures on the return verification envelopes;

(d) the county election administrator shall record on the transport box logs the number of signatures verified as valid and the number of those not validated. Such numbers must balance with the school district count recorded on the transport logs;

(e) the unvalidated return/verification envelopes shall be banded together, marked "to be voided and not counted" and placed in the transport boxes with the valid return/verification envelopes. The transport boxes shall be resealed and returned to the school district clerk (election administrator) for counting or disposition as provided by law;

(f) those ballots not validated shall be recorded by the school district clerk (election administrator) as provided in ARM [44.9.313](#);

(g) cost of verifying signatures shall be charged to the school district at a rate to be agreed upon by the school district clerk (election administrator) and the county election administrator.

(2) The ultimate test in signature verification is whether or not officials are convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card. In making their determination, officials may include consideration of factors like:

(a) whether the capital letters match;

(b) whether letters tail off similarly;

(c) whether letter spacing is similar;

(d) whether the overall appearance is substantially similar; and

(e) whether the relationship of the signature to the signature line is similar.

(3) Signatures are not required to be identical in either form or content. It is sufficient if a substantial similarity exists, so long as officials can determine that the signatures are the same individual. So, the use of a common name abbreviation, or substituting an initial in place of a first or middle name, will not necessarily invalidate the signature.

(4) The official shall check and initial each envelope as the signature is verified. (History: Sec. [13-19-105](#), MCA; IMP, Sec. [13-19-310](#), MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1987 MAR p. 2394, Eff. 12/25/87; AMD, 1990 MAR p. 308, Eff. 2/9/90.)

44.9.313 RECORD OF QUESTIONED BALLOTS (1) In each case where a returned ballot (other than those returned by the post office as undeliverable) is not validated for counting, whether because the signature cannot be verified, because of failure to verify address by elector, a procedural mistake has been made by the elector, or some other reason, the election administrator shall enter in a log he maintains for that purpose, the following information:

- (a) the name of the elector involved;
- (b) the nature of the item in question;
- (c) the date, time, and manner by which notice to the elector was given or attempted; and
- (d) the final resolution of the question and the manner in which it was resolved. (History: Sec. 13-1-202 and 13-19-105, MCA; IMP, Sec. 13-19-105, MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1998 MAR p. 1285, Eff. 5/15/98.)

Sub-Chapter 4

Specifications for Materials Used

44.9.401 TRANSMITTAL ENVELOPE (1) The transmittal envelope shall be in substantially the same form as prescribed by the secretary of state.

(2) The words "OFFICIAL BALLOT - DO NOT DELAY" and the full official return address of the election administrator conducting the election shall appear on the face of the envelope. The flap side of the envelope may have "VOTE AND RETURN PROMPTLY" printed in large type.

(3) The transmittal envelope may be a window envelope so that the name and address on the enclosed return/verification envelope is visible.

(4) Addressing the transmittal envelope to the proper elector is not a substitute for also affixing the elector's name and address to the return verification envelope. (History: Sec. 13-1-202 and 13-19-105, MCA; IMP, Sec. 13-19-105, MCA; NEW, 1985 MAR p. 1020, Eff. 7/26/85; AMD, 1998 MAR p. 1285, Eff. 5/15/98.)

44.9.402 RETURN/VERIFICATION ENVELOPE (1) The return/verification envelope is used by the elector to mail or return the voted ballot to the proper election administrator and it shall be in substantially the same form as prescribed by the secretary of state.

(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "POSTMASTER: OFFICIAL BALLOT - DO NOT DELAY" and "RETURN SERVICE REQUESTED", to ensure the nonforwardability of the mail ballots, should also appear.

(3) In the upper-right hand corner should be the words "Place Sufficient Postage Here (1st Class) " enclosed in a box to indicate stamp placement.

(4) The flap side of the envelope should show by corner brackets where the elector's name and address is to be placed with the following words printed

immediately below: "POSTAL CARRIER: DO NOT DELIVER TO THIS ADDRESS--(SEE OTHER SIDE) ."

(5) Beside this space an affidavit shall be printed substantially in one of the following forms:

(a)

Voter's Affidavit

"I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is: _____) . I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot."

(Signature of Elector)

(Today's Date)

or

(b)

Voter's Affidavit

I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if the address is not correct, I have completed a change of address form which I have enclosed in this envelope) . I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.

(Signature of Elector)

(Today's Date)

(History: Sec. [13-1-202](#) and [13-19-105](#), MCA; [IMP](#), Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; [AMD](#), 1990 MAR p. 308, Eff. 2/9/90; [AMD](#), 1998 MAR p. 1285, Eff. 5/15/98.)

[44.9.403](#) **SECRECY ENVELOPE** (1) The ballot secrecy envelope shall be of a size to fit within the return/ verification envelope and shall be in substantially the same form as prescribed by the secretary of state. The words "BALLOT SECRECY ENVELOPE" should be printed on the face.

(2) The envelope used as the secrecy envelope should be of sufficient paper weight to conceal the contents. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec.

[13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; [AMD](#), 1990 MAR p. 308, Eff. 2/9/90.)

[44.9.404](#) INSTRUCTIONS TO VOTERS (1) Instructions shall be included with the ballot, the secrecy envelope and the return verification envelope as part of the packet mailed to the voter. The instructions shall detail the mechanical process which must be followed in order to properly cast the ballot. The instructions shall also:

(a) advise the voter that the election is to be by mail ballot only, that he must provide his own postage, if such is the case, and that regular polling places will not open;

(b) list the location where the voter may obtain a replacement ballot if his ballot is destroyed, spoiled, or lost;

(c) list the location(s) where the voter may deposit his ballot if he chooses not to mail it; and

(d) advise the voter that in order for his ballot to be counted, it must be received in the election administrator's office no later than 8:00 p.m. on the day of the election. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85.)

[44.9.405](#) REGISTER (1) The register for a mail ballot election shall be similar to the register for a regular election except that:

(a) it need not have a place for the elector's signature since the elector is required to sign the affidavit on the return/verification envelope instead;

(b) it should have sufficient space to record such information as the return of each validated ballot and the issuance of any replacement ballots; and

(c) it may, where voting is allowed for qualified electors who are not registered, include addendum pages on which to record the names of any such electors who are not known to officials at the time the register is prepared. (History: Sec. [13-19-105](#), MCA; [IMP](#), Sec. [13-19-105](#), MCA; [NEW](#), 1985 MAR p. 1020, Eff. 7/26/85; [AMD](#), 1990 MAR p. 308, Eff. 2/9/90.)

NEW RULE I LATE AND LATE TRANSFER REGISTRATION
APPLICANTS IN MAIL BALLOT ELECTIONS (1) An individual seeking to register or transfer the elector's registration after the close of regular registration must appear in the county election office.

(2) If a late or late transfer registration applicant comes in to register in the county election office before mail ballots are mailed, a county election official must register the applicant in the statewide voter database and follow the procedures for absentee electors in 13-19-303, MCA, until noon on the day before the ballots are mailed.

(3) If a late or late transfer registration applicant comes into the county election office to register after noon on the day before the date on which the mail ballots are mailed, the applicant must fill out the form under ARM 44.9.305 and if the applicant meets all applicable requirements for being issued a ballot, an election official shall issue the elector a ballot.

(4) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers:

(a) subject to 13-2-304(2), MCA, register the applicant in the statewide voter database as a duplicate voter;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

AUTH: 13-19-105, MCA

IMP: 13-2-304, MCA

NEW RULE II INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS

(1) Inactive electors are not provided with mail ballots unless they reactivate under the following procedures:

(a) If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) before the ballots are mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and send the elector a ballot on the same date as all other mail ballots are mailed.

(b) If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) after the day on which the ballots were mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and provide the elector with a ballot in person or by mail.

(c) In neither (1)(a) or (b) is it necessary for an election official to require the elector to fill out a form under 13-19-305, MCA, since the elector, by following 13-2-222, MCA, is activating the elector's registration and is therefore automatically eligible for a ballot.

AUTH: 13-19-105, MCA

IMP: 13-2-222, MCA